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An Analysis
OF
WILLIAMS
ON THE
LAW OF REAL PROPERTY.

FOR THE USE OF STUDENTS.

BY

A. M. WILSHERE, LL.B.,

OF GRAY'S INN AND THE WESTERN CIRCUIT, BARRISTER-AT-LAW,

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PREFACE.



THE only preface necessary for a work of this description is a warning that it is designed merely as an assistance to the memory of the student who *has read* the parent work. It is a note book and nothing more.

A. M. W.

1, ELM COURT, TEMPLE,

9th June, 1908.

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TABLE OF ABBREVIATIONS.



St. or Sts.	Statute of or Statutes of.
Ct.	Court.
S. L. A.	Settled Land Act.
C. L.	Common Law.
<i>p. a. v.</i>	<i>pur autre vie.</i>
<i>c. q. v.</i>	<i>cestui que vie.</i>
<i>c. q. t.</i>	<i>cestui que trust.</i>
R. P. A.	Real Property Act.
C. A.	Conveyancing Act.
Ch. D.	Chancery Division.
W. A.	Wills Act.
C. L. P. A.	Common Law Procedure Act.
L. T. A.	Land Transfer Act.
L. C. A.	Land Charges Act.
J. A.	Judgments Act.
M. W. P. A.	Married Women's Property Act.

INTRODUCTORY.

OF THE NATURE OF REAL ESTATE.

Property.—The word property is used as denoting (1) the *right* of ownership; (2) the things which are the *objects* of a right of ownership; (3) anything which can be assessed at a money value.

Ownership chiefly imports the rights of exclusive enjoyment and possession. It may be (1) **Absolute** where it (a) includes the rights of free enjoyment and disposition, (b) is unlimited in point of duration, (c) is not derived out of the ownership of another; (2) **Limited** where either (a), (b) or (c) is wanting.

Things are (1) **Corporeal**, *i.e.*, tangible objects; (2) **Incorporeal**, *i.e.*, mere rights, such as a right of way or the right to recover a debt.

Similarly, property considered as an aggregate of rights consists of (1) rights of ownership over tangible objects, clothed with possession; (2) bare rights unaccompanied by possession.

Property in Land and Goods.—By English law goods may be the objects of absolute ownership, but land is merely the object of *tenure*; in land there cannot be absolute ownership except in the Crown, of whom all land is held, either immediately or through some intermediate (*mesne*) lord.

A subject can have but an **estate** (*a*) in land, which is,

(a) *Estate (status)* first denoted a man's personal condition in land, then the nature, and then the extent of his interest in land.

however, *property*, since he has the rights of exclusive enjoyment and possession of his holding. The greatest estate is an estate in *fee simple*, *i.e.*, an estate inheritable by the blood relations of the holder, and to which are attached the rights of free enjoyment and disposition, making it nearly equivalent to absolute ownership.

The distinction between land and goods is due to (1) the fact that in early times land was the principal form of capital, and services, now paid for in money, were then requited by grants of a holding of land. From the tenants in chief who held land by military services to the King, to the peasant who held by field labour on his lord's demesne, the whole social organisation was based on landholding for services; (2) the physical superiority of land, its permanence and indestructibility, so that a person wrongfully ejected can always be restored to the land itself.

The principle of feudal tenure was definitely established in England after the Conquest, when William I., in granting English lands to his followers, or regranteeing them to their former owners, did so not by way of absolute gift, but subject to the obligations of fidelity and service to the King in which, if the grantees failed, their holdings would be forfeited.

Land being thus the object of tenure, a parcel of land in a person's occupation with its appurtenant rights was known as a *tenement*. Not every occupier, however, was a feudal tenant; the three most important classes of tenancies were (1) **Freeholding**, held of the King or a mesne lord by free—usually military—services; (2) **Villeinage**, where land was held of the freeholder by services chiefly of field labour regulated by custom, and often servile in character; (3) **Leasehold**, *i.e.*, land held under contract with the freeholder for possession for a certain number or *term* of years.

The incidents of these three holdings varied in respect of (A) the protection given to the possession of the tenant; (B) the devolution of the holding upon death.

(A) Only the freeholder was fully protected. He alone could bring an action in the King's Ct. to recover his holding

from anyone who had ejected him or was in possession of it. The villein held merely at the will and on behalf of his lord, and if his customary rights were infringed he could only appeal to his lord's court for redress. The tenant for years was considered merely the bailiff of the freeholder. If ejected, he originally had no remedy unless he held under a covenant with his landlord. In that case he might bring an action of covenant against the landlord if ejected by him or anyone claiming by superior title. Later he was given special actions for damages against any person who dispossessed him, and *sub* Edw. IV. he could also recover possession of his holding.

(B) The estate of the freeholder was hereditary; it passed to and was recoverable by the heir, and could not originally be devised away from him. In villeinage the descent of the land depended upon custom. The interest of a tenant for a term of years was reckoned among his chattels at his death.

[Chattels, being absolute property, were applied first in payment of debts. If any surplus remained, one third might be disposed of by will if a wife *and* child survived, one half if a wife *or* child, otherwise the whole. The will was carried out by the executors of the deceased, who at first took only the surplus, the heir paying the debts; but subsequently took the whole and paid the debts. If a man died *intestate*, the administration of his goods was committed to the ecclesiastical courts and performed after 31 *Edw. III. c. 11* by an administrator chosen from the next friends of the deceased.]

A freeholding being then the only kind of property in land which was fully recognised, the word "tenement" was used to denote a free tenement only, and the words "lands" or "lands and tenements" as denoting freeholds. Further, as anything which may descend to the heir is called a *hereditament*, lands and tenements were known as hereditaments.

Real and Personal Property.—The terms "real" and "personal" were at first applied to actions. Real actions were those in which restitution of the very thing claimed might be enforced by execution issuing *in rem*. Personal

actions were those brought to obtain pecuniary compensation (damages) for the violation of a right. *Sub* Hen. III. it was established that specific restitution could be claimed only in actions for the recovery of immoveables. In civil proceedings for moveables the defendant could absolve himself by payment of their value (*b*), and such actions were therefore classed as personal. Actions were thus said to *sound* in the *realty* or in the *personalty* according as the relief was specific recovery or damages. Hence the word *realty* was used to denote things specifically recoverable, *i.e.*, lands and tenements (also called "things real"), while moveable goods, debts, &c. were termed things personal.

Freeholds being, however, originally the only lands specifically recoverable, the word "realty" was used as denoting freehold. Interests in land, which were reckoned as chattels, were known as *chattels real*, while moveable goods were *chattels personal*.

As freeholds passed to the heir but chattels to the executor, the notion of descent to the heir became associated with realty, and only things inheritable as well as specifically recoverable—*i.e.*, *real hereditaments*—were classed as real estate. Chattels real, though specifically recoverable, were considered personal estate as they passed to the executor.

The terms *real and personal estate* did not come into general use much before Charles II. By that time the development of modern commerce and capital had begun. Tenure had lost its importance as money payments were adopted, and the freeholder in all but form enjoyed absolute ownership.

Military tenure was finally abolished by 12 *Car. II.* c. 24. Villeinage had become extinct, giving rise to the customary tenure of *copyhold*, and, since the copyholder might maintain an action for the recovery of his holding and might also have an estate inheritable by his customary heir, copyhold was included in real estate. Leaseholds, however, never ranked as real estate.

It must be noticed that the common law rule of descent to

(*b*) Since the C. L. Procedure Act, 1854, it has been possible to enforce the specific restitution of chattels.

the heir, which was characteristic of real estate, has now been modified by the Land Transfer Act, 1897 (p. 42).

The terms corporeal and incorporeal are particularly applied to hereditaments. Land in the possession of a freeholder is a corporeal hereditament, while mere rights to or over land in another's possession—*e.g.*, a reversion in fee or a right of way—are incorporeal hereditaments.

The former were alienable at C. L. by *feoffment*, *i.e.*, gift of a feudal estate, coupled with livery of *seisin* or formal delivery of possession. The latter, if alienated with land for the benefit of which they were enjoyed, passed by feoffment of the land without express mention; but if alienated alone required for their transfer a sealed writing or *deed* of grant. Hence corporeal hereditaments were said to be in *livery*, but incorporeal in *grant*.

PART I.

OF CORPOREAL HEREDITAMENTS.

CHAPTER I.

OF FREE TENURE.

Free Tenure.—A freeholder who is possessed of land (a) for an estate in fee simple is said to be *seised* [*i.e.*, possessed] *thereof in his demesne as of fee.*

The freeholder might be (a) a tenant *in capite* holding by a grant immediately from the King; (b) a sub-tenant to whom a tenant *in capite* had made a similar grant by *subinfeudation*, becoming thus a mesne lord between the King and the sub-tenant. The mesne lord was no longer seised *in his demesne* of the land which he had so granted but *in service*.

The sub-tenant might in the same way make a further grant, and so on *ad infinitum*; at first, however, the law of feudal tenure was applied only to the estates of the greater landholders.

Each feudal lord was mainly bound to warrant his tenant's title to the land bestowed, and to give him lands of equal value if he was ejected by anyone showing superior title. The tenant was bound to fealty and to perform the services stipulated for.

The *St. Quia Emptores* (18 *Edw. I. c. 1*) abolished subinfeudation and permitted every free tenant in fee simple to sell his whole holding or any part thereof, the purchaser holding not of the vendor but of the vendor's lord and subject to the services upon which the vendor had held. Thenceforth it has been impossible to create tenure upon the

(a) The ownership of land carries with it everything both above and below the surface. *Cujus est solum ejus est usque ad cælum et usque ad inferos.*

grant of a fee, nor could a freeholder in fee any longer make himself a mesne lord.

The Domesday Survey.—At this time large tracts of land in each county belonged to the King or were held by tenants *in capite*. Each tract usually consisted of several *manoria*, which were not all necessarily in the demesne of the tenant *in capite*, but might be held of him by sub-tenants.

A manor was the unit of agricultural tenure and included (a) Land in the demesne of the lord of the manor, containing his mansion; (b) the common fields and the houses of the *villani*; (c) the cottages and arable land belonging to the *cotarii* (cottiers); (d) the waste lands on which the cattle of the tenants were pastured; (e) any freeholdings held by sub-tenants.

In some parts of England there also existed another kind of freeholding, that of the *liber sochemannus*, holding part of the lands in a manor by light labour services, and bound also to do *suit of court* (p. 8). In towns and boroughs there was a third species of freeholding, namely, houses held in *burgage* by the *burgenses* (burgesses), generally at a money rent, and subject to the customs of the borough.

Changes between 11th and 13th Centuries.—The *villani* became *personally* unfree. As the law of tenure spread downwards, the number of small freeholdings increased, and a large class of free tenants arose, who held merely parts of a manor at fixed rents, and by occasional and definite agricultural services. Their tenure acquired the name of *socage* after that of the *liberi sochemanni*.

The Classification of Tenures.—Henry II. re-organised and appointed permanent judges of the King's Ct., and by the *assize of novel disseisin* gave a remedy in that Court to all freeholders wrongfully disseised. As a result of the judge-made law thus established, the following classification of tenures was accomplished:—

- (A) **Free tenure**, which was either spiritual or lay, the two chief forms of the latter being knight's service and socage;
- (B) **Villeinage**, which was either pure or privileged.

The chief incidents of tenure by knight service were (1) the

obligations of the tenant of which the chief were—(a) to perform military service for his lord. This, after Henry II., was in the case of sub-tenants usually commuted for a money payment (*scutage*). Both *scutage* and the obligation of military service became obsolete after Richard II.; (b) to render pecuniary aids to ransom the lord, to make his eldest son a knight, and to marry his eldest daughter; (c) to do homage upon entering his estate and to take the oath of fealty; (d) to pay (if he was of full age) a fine (*relief*) on succeeding to his ancestor's estate. The heirs of tenants *in capite* were also liable to other exactions; (e) to do *suit of court*, that is, to attend and assist at the business of the Court baron, i.e., the lord's court, in which the freeholders of the manor were both suitors and judges.

(2) **The Rights of the Lord**—the chief being (a) to have the wardship of infant heirs without accounting for profits, and to dispose of them in marriage to his own greatest advantage; (b) to have the lands again as his escheat on failure of the tenant's heirs or on his attainder. On attainder the lands were first held by the Crown for a year and a day, except in case of high treason, when they were forfeited absolutely to the Crown.

Grand Serjeanty was almost equivalent to knight service, and was subject to the burdens of wardship and marriage. From the time of Littleton it was a holding by personal services to the King, such as carrying his banner.

Free Socage was originally the tenure of the *liberi sochemanni* (p. 7); afterwards the term was extended to the tenure of freeholders holding parts of a manor by rent in money and services, which were generally agricultural but fixed, and less onerous than those of villeins, and which were subsequently commuted for money payments. A tenant in socage was bound to take an oath of fealty, and was liable to render the aids *pour fille marier* and *pour faire fils chevalier*. Suit of court and escheat were also incident to socage and a relief of one year's rent on succession. But the right to the wardship and marriage of an infant heir did *not* devolve upon the lord but upon the nearest relative to whom the inheritance

could not descend, who, by 52 Hen. III. c. 17, was accountable to the heir.

The term socage was extended later to include all tenure by certain services other than knight service, and, particularly, petty serjeanty and burgage.

Petty serjeanty was a tenure by some service of small value, as where lands were held by yielding yearly a sword or other small implement of war.

Frankalmoign.—This tenure arose when land was given to an ecclesiastical corporation to be held by them and their successors by Divine services for the soul of the grantor and his heirs. No temporal service was required of them, and, as a corporation never dies, no escheat was possible.

Free Tenure in Modern Times.—Scutage, military service, homage and fealty rapidly became obsolete, but the rights of wardship and marriage and the exactions to which heirs of tenants *in capite* were subject were enforced until 1645, when they were abolished. And by 12 Car. II. c. 24, all estates of inheritance ~~except~~ copyhold and frankalmoign were turned into free and common socage and relieved from all the charges of knight's service.

The chief incidents of modern socage tenure are (a) a small *quit-rent*, i.e., a rent by which the tenant is quit of all services; (b) a relief of one year's quit-rent payable by the heir; (c) suit of court—in case of estates in fee simple held of any manor still existing; (d) escheat on failure of heirs from *natural* causes. By the Forfeiture Act, 1870, all attainder, forfeiture, or escheat upon judgment for treason or felony was abolished. In case of escheat the lands pass to the Crown unless there is a mesne lord who can show that the estate so terminated was originally granted before the *Quia Emptores*, and was held of him and not of the Crown.

Grand serjeanty still remains, deprived of the burdens of knight's service but retaining its honorary services. Petty serjeanty being practically socage, was unaffected by the 12 Car. II. c. 24.

Other existing varieties of socage tenure are—

(1) **Gavelkind**—prevailing chiefly in Kent—in which (a) if

a tenant in fee dies intestate the land goes to all his sons in equal shares; (b) a tenant in fee can, at the age of 15, dispose of his estate by feoffment; (c) no escheat existed on judgment of death for felony; (d) particular rules governed dower and curtesy (pp. 57, 61).

(2) **Borough English**, in which the estate devolves to the *youngest* son.

(3) **Ancient demesne**, existing only in manors which were in the demesne of the Crown *sub* Edward the Confessor and William I. Before 1852, all actions and judicial proceedings concerning the title to land of this tenure could take place only in the lord's court.

CHAPTER II.

OF AN ESTATE IN FEE SIMPLE.

ESTATES in land are either freehold or less than freehold. Freehold estates are either estates of inheritance (fee simple, fee tail) or for some definite period of *uncertain* duration (life estates, *pur autre vie* estates). Estates less than freehold arise where land is held for certain time, or at the will of the donor, or on sufferance.

An estate in fee simple is an estate given to a man and his heirs, inheritable by his blood relations, collateral and lineal, according to the rules of descent. It possesses all the incidents and advantages of absolute ownership except the form. These advantages were, however, gained gradually.

Right of Alienation during Life.—Originally the feudal system did not permit alienation as being inconsistent with the rights of (a) the heir—a grant of a fee to A. and his heirs being considered to confer a separate and independent interest upon the heirs; (b) the lord, who retained rights over the land by virtue of the services due which he could enforce by distress, and who also had the right of an escheat. Consequently a tenant could originally alienate land only by subinfeudation, and even then only with the consent of his own heir and of the lord.

Right to Alienate as against the Heir.—*Sub Hen. II.* a freeholder might, in certain cases, grant away *part* of his land; he could not by alienation entirely disinherit an heir of his body, but only collateral heirs. *Sub Hen. III.*, however, even a son might be wholly disinherited, and it was held that on a gift of land to A. and his heirs the heir acquired nothing by *purchase*, i.e., took no immediate interest or

estate, but acquired merely the expectation or possibility of inheritance.

(b) **Right to Alienate as against the Lord.**—*Sub* Hen. III. it was held that a tenant might, even without consent of his lord, absolve himself from his feudal obligation by disposing of his *whole* tenement to another to hold of his lord. But a part of the tenement could be alienated only by consent of the lord or by subinfeudation, which deprived the lord of the rights of wardship and marriage in respect of infant heirs of the sub-tenants. With regard to escheat, a tenant could not at first alienate so as to bar the claim of the lord to have the land, on failure of his heirs, unless the grant contained words expressly conferring on the tenant the power of alienation. But *sub* Edw. I. it was held that alienation in fee by a tenant holding to him and his heirs would deprive the lord of his escheat on failure of the tenant's heirs. Finally, by the *Quia Emptores* (p. 6), the right to alienate all or any part of a holding was established, the new tenant holding as long as his own heirs may last independently of the existence of any heirs of the former tenant. The statute did not, however, apply to tenants *in capite* who did not acquire liberty of alienation until a later date. [For alienation by *will*, see p. 44.]

Exceptions to the ordinary right of alienation still exist in the case of (a) infants and other persons subject to incapacity (p. 54); (b) alienation into mortmain (p. 55); (c) alienations for charitable purposes. By the *Mortmain Act*, 1888, replacing earlier Acts, every assurance of any hereditaments for charitable uses is void unless made in accordance with the provisions of the Act (*a*). This Act prohibited the gift *by will* to a charity of any interest in land. But by the

(a) The assurance must be (i) by deed; (ii) executed before at least two witnesses; (iii) twelve months before death [except in case of sales for full value]; and (iv) enrolled in the Central Office of the Supreme Ct. within six months after execution; and (v) must take effect in possession immediately; and (vi) must, as a rule, be without any provision for the benefit of the assurer or his successors. Assurances of personal estate to a charity for the purchase of land are subject to similar restrictions, but if personalty be so directed to be laid out by will, the charity may keep the gift and disregard the condition.

amending Act of 1891 land may be assured by will for a charity, but, except in certain specified cases, it must be sold within one year from the testator's death; (d) all voluntary conveyances of land were formerly, as a result of 27 *Eliz. c. 4*, held to be void as against subsequent purchasers for value from the grantor. But by the *Voluntary Conveyances Act*, 1893, no voluntary conveyance made *bond fide* and without fraudulent intent can be defeated by any subsequent purchase for value. [For other conveyances which may be avoided, see p. 52.]

Free enjoyment.—A tenant in fee simple has the right of free enjoyment, and may commit any waste or use his lands as he pleases, provided that he does not inflict injury upon his neighbours by infringing upon their rights to enjoy their lands in the same manner, and that he is not guilty of creating a public nuisance; provided also that his rights have not been curtailed by his own or his predecessor's contracts or by statutory regulations.

Restrictions on alienation cannot, as a rule, be annexed to any gift of property, but (a) the *duration of* a gift may be limited to the time during which it can be personally enjoyed by the grantee. Thus land may be given to or in trust for A. *until* he becomes bankrupt or attempts to dispose of it. But a man cannot settle his *own* property on himself so that on his bankruptcy it shall go over to some other person and not pass to the trustee in bankruptcy. (b) Property may be settled on a married woman so that she cannot dispose of it during marriage (p. 59). (c) The policy of the law prohibits the alienation of certain property, *e.g.*, pensions and salaries given by the State for the performance of present or future duties.

The Heir.—Subject to the debts of the deceased (p. 50), and to the rights of his or her husband or wife (Chap. XIII.), and subject also to the L. T. A. 1897 (p. 42), the lands of a tenant in fee simple if undisposed of by his will descend to his heir. The heir is appointed by law. All other persons whom an individual may appoint as his successors, *e.g.*, a devisee under his will, are assigns. The heir comes into

existence only upon the decease of the ancestor ; during his lifetime a man can only have either (a) an *heir apparent*, that is, a person who, if he survives, must be the heir, *e.g.*, his eldest son, or (b) an *heir presumptive*, *i.e.*, a person who would be heir if the ancestor died at once, *e.g.*, his eldest daughter.

Sub Hen. II. estates of inheritance held by military tenure descended first to the eldest son, while those of free sokemen were either shared among the sons or passed to the youngest or eldest according to the custom. In default of sons, they passed in either case to daughters in equal shares. Next came descendants of children, and in default of them the collateral relations. In the later socage tenure the land followed the rules of descent applicable to military tenure, and descent to the eldest of several males in the same degree was the rule for all freehold land except gavelkind.

By Bracton's time it was established that all descendants *in infinitum* of any person who would have been heir should inherit in his place by representation. A lineal ancestor, however, could never be heir to his descendant, and kindred of the half blood were altogether excluded.

These rules remained unaltered until the Inheritance Act, 1833 (p. 42).

CHAPTER III.

OF AN ESTATE TAIL.

AN estate tail is an estate which, if left to itself, will descend on the death of the first owner to all his lawful issue *in infinitum*, but determines on cessation of issue. It may be either *general*, *i.e.*, to the heirs of his body generally, or *special*, *e.g.*, restrained to heirs of his body by a particular wife. It may also be *in tail male* or *in tail female*, descending only to males or females.

History.—To prevent collateral relations succeeding to a tenant in fee who left no issue, it was necessary to limit the estate to him and *the heirs of his body*, making a *conditional gift*, the condition implied being that if the donee died without such heirs, or if such heirs failed at any future time, the land should revert to the donor. By the time of Edward I. it was held that the mere birth of issue was a performance of the condition so as to enable the donee to alienate in fee and prevent the land from reverting to the donor if his issue came to an end.

To remedy this, it was provided by the *De Donis Conditionalibus* (13 *Edw. I. c. 1*) that in case of such a gift the will of the donor should be observed, and that the donee should have no power of alienation so as to prevent the land from descending to his issue or reverting to the donor on failure of issue.

Since this statute an estate given to a man and the heirs of his body has been termed an estate tail. The inconvenience of strict entails soon became manifest, and means were found of evading the statute. It was held that if a tenant in tail disposed of the land, but left assets of equal value to his

issue, the issue were bound to abide by his alienation. Further, it was held that the issue would be barred if a mere judgment had been obtained entitling them to recover lands of equal value from some other person. And this held good even though the judgment had been obtained by collusion with the tenant in tail.

Recoveries and Fines.—An estate tail might accordingly be barred by judicial proceedings as follows:—

If A. warranted the title of lands given by him to B., he might be called upon to defend any action brought to recover the lands from B. or to surrender to B. lands of equal value. The tenant in tail, therefore, on a collusive action being brought against him, *vouched to warranty* X., some man of straw, *i.e.*, called on him to defend the action as having been the original donor of the estate tail; X. allowed judgment to go by default. The plaintiff (demandant) got judgment to recover the land from the tenant in tail, who in his turn got judgment to recover land of equal value from X. The effect of this mere judgment for recovery against X. was to bar not only the issue but also the reversion of the donor and any remainders after the estate tail, and the plaintiff became possessed of an estate in fee simple, which he disposed of according to the wishes of the tenant in tail.

Later the proceedings were varied as follows:—The lands were conveyed by a deed called the recovery deed to another person, D., against whom the action was brought and who was called tenant to the *præcipe*, or writ. D., being sued, vouched to warranty the tenant in tail, who in his turn vouched to warranty the crier of the court, who was termed the common vouchee. The common vouchee then allowed judgment to go by default and a writ was directed to the sheriff to put the demandant in possession.

The claim of the *issue*, though not the remainders and reversion, might also be barred by a *fine*. This was a compromise made by leave of the Ct. in a genuine or fictitious action, whereby the lands were acknowledged to belong to one of the parties. It was enrolled among the records of the Ct. and put an end to all claims not made within a year and a day.

Originally the *De Donis* prevented an estate tail from being barred in this way, but by Statutes of Hen. VII. and Hen. VIII. a fine by a tenant in tail had the effect of barring his issue.

Both fines and recoveries were abolished by the **Fines and Recoveries Act, 1833**, which substituted for them a simple deed executed by the tenant in tail and enrolled formerly in the Ct. of Chancery and now in the Central Office of the Supreme Ct.

No plan can now be adopted whereby lands can be tied up for a longer period than the lives of existing persons and 21 years from their decease (p. 76). Where estates are kept up from one generation to another, this is done only by re-settlement. Thus, on a marriage settlement, land is settled on the husband for life, and on his death to the first and other sons successively in tail male. The estate is thus tied up until some tenant in tail attains twenty-one. He then, with his father, who is life tenant in possession, bars the entail, and the land is re-settled on the father for life, with remainder to the son for life, and remainders to the son's eldest and other sons in tail.

Where an estate tail is not in possession, the right to bar it is subject to limitations. A recovery could be suffered only by a tenant in tail in possession or a tenant in tail in remainder with the consent of the first tenant for life. On the same principle a tenant in tail not in possession can at present bar the reversion and remainders only with the consent of the *protector of the settlement*, who is usually the first life tenant in possession created by the same instrument as that creating the estate tail. If the protector refuses his consent, the tenant in tail can bar his own issue, but he cannot bar the reversion and remainders. The estate thus created is a base fee, the tenant in tail acquiring a disposable interest merely so long as he has any issue or descendants living. A base fee may, however, be *enlarged* into a fee simple absolute after the protectorship of the settlement has come to an end.

The following estates tail cannot be barred :—

- (1) An estate tail granted by the Crown for public services, and of which the reversion continues in the Crown.
- (2) An estate in *special* tail held by a person who is *tenant in tail after possibility of issue extinct*, e.g., if an estate is given to a man and the heirs of his body by his wife B., it cannot be barred after the death of B.
- (3) An estate held by a woman as tenant in tail *ex provisione viri*.

Note that an *estate tail cannot be barred by will or by contract*, but only by a deed enrolled under the Act of 1833.

Powers of a Tenant in Tail.—A tenant in tail may make any disposition of the lands to hold good during his own life. And by statute he may make dispositions binding his issue and the reversioners or remaindermen. Thus by the Act of 1833 a tenant in tail in possession may, without a deed enrolled, make leases for not more than twenty-one years and at not less than five-sixths of a rack rent.

And the following have all the powers of a life tenant under the **S. L. A., 1882** (p. 20) :—(a) A tenant in tail, except a tenant in tail of land purchased with money provided by Parliament in consideration of public services, who is restrained by Act of Parliament from barring the entail; (b) a person entitled to a base fee; (c) a tenant in tail after possibility of issue extinct.

A tenant in tail has the same rights of enjoyment as a tenant in fee simple and may commit any waste.

Tenure of Estate Tail.—If a tenant in fee simple grants his lands for an estate tail, *tenure* is still created between him and his grantee, as the *Quia Emptores* prohibits subinfeudation only in case of grants in fee simple; and on creation of such an estate any rent or services might be reserved.

CHAPTER IV.

OF AN ESTATE FOR LIFE.

A life estate is a freehold not of inheritance, the tenant's interest ceasing at his death and not passing to his representatives. To create such an estate it is usual to expressly limit the lands to the grantee during his life. But a grant of land by deed "to A." simply without further words expressly conferring on him an estate transmissible to his heirs gives him only a life estate. In wills, however, made after 1837 by the Wills Act, 1837, a devise of real estate without words of limitation passes the fee simple or the whole estate or interest of which the testator had power to dispose unless a contrary intent appears by the will.

If a tenant in fee simple grants lands to another for life tenure is created, as on the gift of an estate tail, and rent or services may be reserved. In early times life estates often arose under leases at money rents, but now they arise chiefly under settlements, and no rent is reserved.

A life estate may be determined not only by natural but by civil death, *e.g.*, outlawry in criminal proceedings.

Powers of enjoyment.—A life tenant, unless restrained by agreement, has the right to cut wood for fuel, for instruments of husbandry, and for repairs, and also to cut underwood and lop pollards. But he may not commit any voluntary waste. Thus he may not cut timber or open mines, but he may continue to work open mines, and may also cut timber on a timber estate previously cultivated with a view to periodical croppings. Formerly the committing of waste entailed forfeiture enforced by a writ of waste. Now a life tenant is liable only to pay damages for any waste committed, but

may be restrained by injunction from committing further waste. Under the **S. L. A., 1882**, a life tenant impeachable for waste in respect of timber may cut and sell any ripe timber with the consent of the trustees of the settlement or of the Court, and may keep one-fourth of the proceeds, the rest being set aside as capital.

If the estate is given to the life tenant by a written instrument expressly declaring his estate to be without impeachment of waste, he may cut timber and open mines, and commit other waste for his own benefit. But without express power he may not commit equitable waste, *i.e.*, pull down the mansion house or cut ornamental timber.

A life tenant is not liable for permissive waste, *i.e.*, mere non-repair, unless the duty of repair is expressly laid on him by his grantor.

A life tenant could not at C. L. make any disposition to last beyond his own life, and he can still do no more for his own exclusive benefit. But he has large powers of disposition for the benefit of those entitled after his death as well as himself. Such powers are means of conveying lands independently of the right of alienation incident to the estate in the land, *i.e.*, powers given to a life tenant of creating leases to hold good after his death. They could originally arise, in the case of settled land, only by the express provision of the parties creating the settlement; but now, under the **Settled Land Act, 1882**, every life tenant in possession under a settlement has wide powers of selling, leasing, &c., exercisable for the benefit of all parties entitled under the settlement, but not for his own benefit to the prejudice of his successors. The chief of these powers are—

(1) To create building leases for not more than ninety-nine years, mining leases sixty years, other leases twenty-one years in England, thirty-five years in Ireland. But the mansion house and grounds may not be leased without consent of the trustees or order of the Ct., except where it is occupied as a farmhouse, or where the site of the house and grounds does not exceed thirty-five acres. All leases must be by deed (except

those for less than three years), must take effect in possession within twelve months from their date, must be at the best rent possible, and contain a covenant for payment of rent and a condition for re-entry on non-payment after thirty days at most. In mining leases three-fourths of the rent must go as capital if the life tenant is impeachable for waste in respect of minerals; otherwise one-fourth. Before making a lease (except those for not more than twenty-one years) he must give notice to each of the trustees and their solicitor.

(2) To *sell or exchange* any part of the settled land, subject to similar restrictions in the case of the mansion house and subject to giving notice as above. All money received on sale or exchange must be paid to the trustees or into Ct., and is to be invested by the trustees according to the directions of the life tenant or of the Ct., in any of the investments authorized by the Act. These include certain securities, discharge of incumbrances upon the settled land, payment for authorized improvements and purchase of other lands. All capital money arising under the Act is made subject to the settlement as if it were land, and the income of invested capital is paid to the persons entitled to the income of the land.

(3) To *mortgage* the settled property to raise money for enfranchisement, equality of partition, or discharging incumbrances.

For carrying into effect his powers he may by deed convey the settled land for all the estate which is the subject of the settlement or any smaller estate. He cannot assign, release, or contract not to exercise his powers, which remain in him, although he assigns his estate. Any proviso in the settlement forbidding him to exercise them is void.

Before making any of the authorized improvements he must submit to the trustees or the Ct. a scheme showing the proposed expenditure, and a certificate of the Board of Agriculture or of an engineer or surveyor approved by them is required before any capital arising under the Act is applied in payment for improvements.

If there is no capital available, money may for certain purposes be borrowed under the *Improvement of Land Act*, 1864.

Determinable life estates arise where land is given for any definite period of time of *uncertain* duration, *e.g.*, to a widow during her widowhood, or to a man until he become bankrupt.

If a life tenant die before harvest, his personal representatives will be entitled to the emblements (*i.e.*, to reap the crop sown); but this right does not exist where the estate is determined through the tenant's own act. An under-tenant, however, in all cases is entitled to the emblements. Under-tenants holding at a rack rent now by the Emblements Act, 1851, s. 1, instead of claiming emblements continue to hold on to the expiration of the current year of the tenancy, paying a proportionate part of the rent to the succeeding owner.

Apportionment of rent.—At C. L. rent was not apportionable. If a life tenant let land reserving rent quarterly and died between two quarter days, no rent was due from the under-tenant to anyone from the last rent day to the death. Also, if a life tenant had a *power* of leasing, his executors had no right to any part of the rent in case of his death between two quarter days, but the whole quarter's rent went to the person next entitled. Now, by the **Apportionment Act**, 1870, all rents and other periodical payments in the nature of income are considered as accruing from day to day and apportionable accordingly.

Pur autre vie estates.—If a life tenant assigns his estate, the assignee is entitled to an estate for the life of the assignor, who is called the *cestui que vie*. Such an estate is called a *pur autre vie estate*, and is freehold. In this case, as well as in that of an original grant to a person for the life of another, the tenant *p. a. v.* was formerly entitled to enjoy the property only so long as he himself lived, unless it was granted to him and his heirs. Otherwise at his death anyone could enter as *general occupant* and enjoy the property during the life of the *c. q. v.* If it was granted to him and his

heirs, the heir entered as *special occupant*. By the Wills Act, 1837, replacing earlier statutes to the same effect, a tenant *p. a. v.* may dispose of his interest by will. If he so disposes of it, or if he dies intestate and there is no special occupant, it devolves upon his executors or administrators, and is subject to his debts and dealt with as personalty. If he dies intestate and the heir takes as special occupant, it is *assets by descent* (p. 50) in his hands.

By 6 Anne, c. 18, any reversioner or remainderman may on affidavit obtain from the Lord Chancellor an order for the production of the *cestui que vie*.

If a *p. a. v.* estate is given to a man and the heirs of his body, a quasi entail is created, which may be barred by ordinary deed without enrolment.

A tenant for years determinable on life or for the life of another, and not holding merely under a lease at a rent, has all the powers of a life tenant under the S. L. A., 1882.

CHAPTER V.

JOINT TENANTS AND TENANTS IN COMMON.

A GIFT to two or more in joint tenancy makes them, as regards all *other* persons, one single owner, but as between themselves they have separate and equal rights. A joint tenancy is therefore distinguished by unity of *possession, interest, title and time* of the commencement of title.

Any estate may be held in joint tenancy. Thus, if land be given to A. and B. without further words, they are joint tenants for life, and after the decease of one the survivor is entitled to the whole during the residue of his life.

If land is given to A. and B. and the heirs of their two bodies, then (i) if A. and B. can marry they have an estate in special tail; (ii) if A. and B. cannot marry, on the death of either the survivor takes the whole as long as he lives, but on his death it is divided between the heirs of the body of A. and of B. as tenants in common.

If *an estate in fee simple* is given to two or more as joint tenants, *e.g.*, to A., B., C. and their heirs, the survivor of the three is ultimately entitled to the whole, and on his death intestate it goes to *his* heirs only. Nor can one joint tenant devise his share so as to prevent the others taking by *survivorship*. The survivor may, however, devise the land as he likes, unless he is a trustee thereof (p. 43).

The L. T. A. 1897, does not affect the right of the survivor to succeed to the whole estate.

The estates of all joint tenants must arise at the same time, except under conveyances taking effect by the St. Uses and under wills.

The proper form of conveyance between joint tenants is a

release, each one already having the seisin of the whole. If one joint tenant alienates his share *during his life*, the joint tenancy is *severed*, and the assignee holds as tenant in common with the other or others of the original joint tenants.

Tenants in common have unity of possession, but distinct and several titles: their shares need not be equal, nor need their interests be the same, and there is no right of survivorship.

Partition.—Both joint tenants and tenants in common can now compel partition. Formerly this was effected by a writ of partition granted under statutes of Hen. VIII., before which it could be effected only by mutual consent. In 1833 the writ of partition was abolished, and it is now effected by a *partition action* in the Ch. D. The partition must be carried out by mutual conveyances, which in the case of joint tenants are in the form of a *release*; in the case of tenants in common a *grant*. By the R. P. A. 1845, s. 3, a partition is void unless made by deed.

By the S. L. A. 1882, a life tenant under a settlement of an undivided share has power to concur in making partition of the whole.

Partition may also be effected by order of the Board of Agriculture without any further conveyance.

By the Partition Act, 1868, the Court of Chancery—

1. *May* direct a sale instead of partition whenever it appears to be more beneficial to the parties interested.
2. *Shall*, unless there is good reason to the contrary, direct a sale if so requested by parties interested in at least a moiety.
3. *May*, if it thinks fit, direct a sale on the application of any party interested, unless the other parties or some of them undertake to purchase his share.

CHAPTER VI.

THE CONVEYANCE OF A FREEHOLDING AT COMMON LAW.

At Common Law a freeholding was transferred by *feoffment* with *livery of seisin*. Feoffment properly is a gift of a *fee*, but came to be applied to the gift of any freehold. The feoffment need not have been put in writing, but formal livery of seisin was always necessary. This was either livery in *deed* or livery in *law*. Livery in *deed* was performed on the land itself, and was the actual delivery of possession by the feoffor to the feoffee. To make it effective, all persons having any estate or interest in the land must either join in making the livery or be absent from the premises. Livery in *law* was made in sight of the land, and no legal estate passed to the feoffee unless he made entry during the life of the feoffor.

Besides mere livery of seisin, it was necessary that apt words should be used to limit or mark out the estate of the feoffee, *e.g.*, the gift must be to him and his heirs, or him and the heirs of his body, according as he was to take an estate in fee simple or fee tail. If the land was given to him simply without further words or without using the proper technical words, *e.g.*, to him and his *assigns* for ever, he took merely a life estate.

Tortious Feoffment.—If A. made a feoffment to B. of a greater interest than he himself possessed, such feoffment operated *by wrong*. It conferred on the feoffee the whole estate limited by the feoffment and enabled him to maintain the seisin delivered to him against all except those whose title was displaced by the feoffment. And even they might in some cases be deprived of all right to enter on the land,

and might be left with merely a right to bring an action for its recovery.

By the E. P. A. 1845, a feoffment no longer can have any tortious operation.

Writing was not necessary for the validity of a feoffment; a charter declaring the grant was, however, often drawn up and sealed by the feoffor, and such a charter, even though unsealed, was proof of the grant. But soon after the Norman Conquest it was settled that a charter, to amount to conclusive proof, must be sealed by the grantor. Henceforward, only sealed documents were conclusive evidence, and, in fact, nothing was called a writing except a document under seal. Hence a deed is even now necessary wherever the Common Law requires writing. The superior importance of deeds still remains, and they can be enforced, although gratuitous, because of their formal nature. But agreements not made by deed, although made in writing, cannot be enforced unless the promisor received some valuable consideration in return for his promise.

In modern practice the mere placing of the finger on a seal already made is equivalent to sealing, and the words "I deliver this as my act and deed" are equivalent to delivery, even if the party keep the deed himself. An *escrow* is a deed delivered to some person not a party to it to be delivered up to the other party on performance of some condition. It is not complete until delivered up on performance of the condition, but then takes effect from the date of its execution. Alterations, &c. in a deed are presumed to have been made before execution; any material alteration after execution makes a deed void. If there is only one party to a deed, it is called a *deed-poll*; if more than one, an *indenture*.

Until Charles II. writing remained optional in every case in which a deed was not necessary. But by the St. Frauds (29 Car. II. c. 3) it was provided that any estate or interest in lands made by livery of seisin only, and not put into writing, and signed by the parties or their agents authorized in writing, should have the effect of an estate at will only.

From this were excepted leases not exceeding three years from the making, *and* on which a rent of at least two thirds of the full value is reserved. Now by the R. P. A. 1845, a feoffment other than one made under a custom by an infant which is subject to the St. Frauds is void unless evidenced by deed.

Besides a feoffment, lands could at C. L. be conveyed without livery of seisin by fines and recoveries, lease and release (p. 37), confirmation, exchange, or surrender. None of these methods were, however, effective without actual entry.

CHAPTER VII.

OF AN EQUITABLE ESTATE IN LAND.

SECTION I.—OF EQUITY AND THE COURT OF CHANCERY.

Equity and the Court of Chancery.—Equity, as opposed to *law*, denotes the body of rules developed in the exercise of the equitable jurisdiction of the Ct. of Chancery. This, like the jurisdiction of the C. L. Cts., was derived from the authority of the King, and arose from the practice of *petitioning* the King and his select Council for relief in cases where no relief could be had at C. L. from the judges to whom the ordinary jurisdiction had been delegated. About 22 Edw. III., all petitions in these “matters of grace” were ordered to be prosecuted before the Chancellor, whose jurisdiction was further extended by 17 Rich. II. c. 6. By the time of Edward IV. the Chancery process was definitely established. It was a process *in personam*, directed against the person complained of, who was summoned to appear and was compelled to carry out the orders of the Ct., or on failure was attached and committed for his “contempt” of the Ct.’s order. But its rules were enforced only in the Chancery Cts.; they created no rights cognizable by the C. L.

Relief was granted, first, where persons who had suffered wrongs at C. L. were hindered by oppression from pursuing their legal remedy. The value of Chancery procedure was that the defendant was interrogated and compelled to make *discovery* of facts which might otherwise have remained undetected, and also that he might be compelled to do some particular act, and not merely to pay damages. Later, the Chancery jurisdiction was extended to cases where there was

a right to relief, but no remedy at C. L., and finally to cases in which there was no cause of action at all at C. L.

As the Chancery was a Ct. of *conscience*, not dealing with legal *rights*, but granting *relief* in particular cases, it was at first governed by few definite principles, and depended on the discretion of the Chancellors. Gradually, however, its relief came to be administered on fixed principles derived from its own previous decisions. Modern equity dates from the Restoration, and was evolved largely from the judgments given from the Chancellorship of Lord Nottingham to that of Lord Eldon. By that time it had become a body of case law depending on precedent and admitting no further accessions from the moral domain.

By the Judicature Acts of 1873—1875, the jurisdiction of the old Ct. of Chancery was transferred to the High Ct. of Justice, then established. Equitable rights are now recognized in every branch of the High Ct., and the rules of equity prevail where they are in conflict with those of the Common Law.

Law and Equity are now administered in the same Ct., and an injunction of a Ct. of Equity against proceedings at law is no longer possible. But for purposes of procedure the administration of certain matters is assigned to the Ch. D.

SECTION II.—OF USES BEFORE THE STATUTE OF USES.

Equitable Estates in Land arose from the practice of men transferring their lands to others in trust, to be disposed of according to the directions given by the donor. This might be done either for fraudulent purposes—*e.g.*, to defeat creditors—or for purposes which could not be carried out by ordinary legal methods—*e.g.*, a gift to a friend on trust that he should deal with it according to the directions given by the will of the donor, the intent being in this case that the donor should have the use of the land during his life.

By Rich. II., it became a common practice for men to enfeoff several others jointly, or others jointly with themselves, to the intent that the feoffees should dispose of the

land according to the will of the feoffor, and hold it for his use. This was often done to escape the burdens of feudal tenure (a). At first the feoffees plighted their faith to carry out the wishes of the feoffor, as a suit for breach of faith could be brought in the Ecclesiastical Cts. From Hen. II., however, such suits were in general prohibited, and, *sub* Rich. II., relief against breach of trust was sought from the Chancellor.

Under Edw. IV., the nature of a *use* was settled. A *cestui que use*—i.e., a person to whose use land was held—had no right in law to the land, but only the right to sue the feoffee in trust personally in Chancery. He could also sue the heirs of the feoffee, or anyone who took the land from the feoffee with notice of the trust, but not an assignee for valuable consideration without notice. In case of such an assignment he might, however, recover damages from the feoffee for his breach of trust.

The feoffee was bound in Equity to allow the *c. q. use* to have the profits of the land, to maintain actions for its protection and recovery, and to *execute the estate*—i.e., to dispose of the land according to the directions of the *c. q. use*.

A use might arise by *implication*—thus, if a feoffment was made without declaring any particular intent, and without any consideration, there was an *implied* use in favour of the feoffor. So, also, on a bargain for the sale of land, the seller, after receipt of the purchase money, was considered to hold the land to the use of the buyer. A use was *alienable* without formality by a mere declaration of the will of the *cestui que use*; hence he could make a testamentary disposition of it. At law the *c. q. use* was considered to have no estate in the land. In equity, he was considered to have the same estate as he would have had in law if the estate had been executed. Hence there might be in the same land two estates—the legal estate of the feoffee to uses and the equitable estate of the *cestui que use*.

(a) The right of survivorship of the joint tenants preventing the accrual of the lord's right to relief, wardship and marriage, &c. (p. 8).

The Statute of Uses.—By 27 Hen. VIII. c. 10, it was enacted that if one person (A.) stand seised of any lands or other hereditaments to the use, trust, or confidence of another person (B.), in such a case B. should be deemed in possession of the land for the same estate as he had in the use. The Statute *executed the use* and gave B. the same estate at law as if the land had been in fact conveyed to him. Thus, if land be conveyed to A. in fee simple to the use of B. and his heirs, the Statute at once gives B. a fee simple in possession. The same applies to implied uses. If A. being seised in fee simple made a feoffment to B. and his heirs without any consideration, and without declaring any use, a use in A.'s favour is implied, which by the Statute is turned into the legal estate, and all that A. gave *results* back to him.

Trusts after the Statute of Uses.—The Statute did not apply to *special trusts*, i.e., where B., the feoffee, had any active duty laid on him as to sell land; nor did it apply, except where the feoffee to uses was *seised* of a *freehold* interest.

But in case of freeholds the Chancery jurisdiction was for a time ousted by the turning of the use into a legal estate. After about a century, however, the doctrine was established in the C. L. Cts. that there could be *no use upon a use*, e.g., if land was conveyed unto and to the use of A. and his heirs to the use of B. and his heirs, the second use had no effect at law as being repugnant to the first, and the legal estate remained annexed to the first use.

Equity, however, dealt with the legal owner in the same way, whether he became legal owner at C. L. or under the Statute, and in such a case considered that A. held in trust for B. Thus equitable estates were re-established.

An *equitable estate* is therefore the interest of one in trust for whom another holds lands as legal owner. The holder is the *trustee*, the person beneficially entitled is the *cestui que trust*, and the nature of the trust estate is the same as that of a use before the Statute.

In *special trusts* it is the duty of the trustee to perform exactly the wishes of the person creating the trust.

In *simple* trusts, where there are no active duties, the trustee is bound to maintain actions for the defence of the land, to allow the *c. q. t.* to have possession and take the profits, and if the trust is for him in fee simple, to convey the legal estate to him at his desire.

A trust estate is still but a right enforceable against the trustee personally and all who take from him, except *bond fide* purchasers for value without notice. In equity, however, the *c. q. t.* is the owner of the land against all persons bound by the trust, and he may have equitable estates therein analogous to legal estates conferred by similar limitations, *e.g.*, an equitable estate in fee tail or for life.

Trusts are (a) **express**—created by act of parties (i) by the conveyance of lands to A. in trust for B.; (ii) by A. declaring he holds his own lands in trust for B. But a mere *promise* to transfer property without a declaration of trust is not enforceable in equity.

(b) **Implied**—created by operation of law (i) where A. conveys property on trusts which fail; (ii) where A. on purchasing property takes a conveyance in the name of B., and there is nothing to show he intended B. to benefit; (iii) where A., being trustee for B., uses his position to obtain some benefit for himself; (iv) where A., having sold property to B., receives the purchase-money before conveying to B. In cases (i) and (ii) there is a **resulting** trust in favour of A.; in (iii) and (iv) A. is a **constructive** trustee for B.

In making declarations of trust, if the intent is clear it is not necessary to use the same formal words as at law. But if technical legal terms are employed, they are construed in their strict legal sense except in **executory** trusts, *i.e.*, trusts in which there is merely an expression of general intent which must be carried out by some further instrument. In such cases words will not be given their strict legal meanings if to do so would defeat the intent of the person creating the trust. Thus in *marriage articles*, where an intent to provide for the children of the marriage is inferred, words which would ordinarily confer an estate tail upon the donee may be construed as giving him merely an estate for life followed by

separate estates in his children. Otherwise the donee might defeat the intent of the settlor by barring the estate tail.

A similar regard to intention is shown in case of implied trusts. Immediately a contract for the purchase of land is complete the purchaser gets at once an equitable estate in fee simple, and if he dies intestate before conveyance his interest devolves on his heir as realty.

So also an agreement for a lease for years gives the lessee an estate in equity during the term. Similarly if land be directed to be sold and the proceeds to be invested in other land to be settled on certain persons, such persons are in equity deemed to be in possession of the estates which they are intended to have. In all these cases the principle is, that Equity considers as done that which ought to be done.

An equitable tenant in fee or in tail has the same right of enjoyment as a legal tenant, but an equitable life tenant is in respect of *waste* in the same position as a legal life tenant.

A legal tenant in fee simple may in equity be subject to restrictions on the use of his land imposed by his own agreement or that of his predecessors for the benefit of some other land, and such restrictions may be enforced by injunction against him, his heirs and assigns, except assigns for value, without notice.

An equitable owner has a free power of disposition *inter vivos* or by will, commensurate with his estate. Thus an equitable estate tail must be barred in the same way as an estate tail at law, and a *c. q. t.* of lands for life cannot for his own benefit dispose of more than his own interest. But a person beneficially entitled in possession to an equitable estate in land in tail or for life now has all the powers given to a life tenant by the S. L. A. 1882.

Trust estates are, equally with legal estates, liable to involuntary alienation for debt.

Creation and Transfer.—Subject to the St. Frauds, trusts may be created and transferred without any particular ceremony or form. By that Statute all declarations of trusts in lands must be evidenced in writing, signed by the settlor. All *assignments* of any trusts must be in writing. Trusts

arising on any conveyance of land by implication or construction of law, and trusts transferred by operation of law, are excluded from the Statute.

Devolution.—Under the L. T. A. 1897, equitable estates in fee simple devolve like legal estates. Before the Intestates Estates Act, 1884, there was no escheat on failure of the heirs of the *c. q. t.*, but the trustee henceforth held the lands in his own right. Now the law of escheat applies just as to legal estates.

Trustees being usually made joint tenants, on death of one the trust estate vests in the survivors. On the death of a sole surviving trustee, the legal estate passes to his personal representatives (p. 42).

The appointment of new trustees could formerly be made only with the concurrence of all the *c. q. t.* being *sui juris*, or by the authority of the Ct. of Chancery, or under an express power contained in the settlement.

Now by the **Trustee Act, 1893**, where a trustee is dead or ⁽¹⁾remains out of the United Kingdom for over twelve months, or desires to be discharged, or refuses to act, or is unfit to act or incapable of acting, a new appointment may be made, in writing, either by persons appointed for that purpose in the trust instrument or by the surviving or continuing trustee or the personal representatives of the last surviving or continuing trustee.

Retirement.—Formerly a trustee could retire only by consent of the *c. q. t.*, or by the authority of the Ct., or by the appointment under an express or statutory power of a new trustee.

Now by the **Trustee Act, 1893**, if there are more than two trustees, a trustee may retire without appointment of a new trustee by a declaration by *deed* of his wish and consent by *deed* of his co-trustees and any other person empowered to appoint trustees. On a fresh appointment, a conveyance to the new trustees was formerly necessary, but now by the same Act the transfer may be made by a *vesting declaration*, made in the first case by the appointor and in the second by the retiring and continuing trustees and any person with power

to appoint trustees. Where the concurrence of a trustee cannot be obtained, *e.g.*, if he is a lunatic, infant, or cannot be found, a *vesting order* is made by the Judge in Lunacy or in Chancery. A similar order may be made where new trustees are appointed by the Ct.

By the **Judicial Trustee Act, 1896**, the Ct. may, on the application of a person creating a trust, appoint a trustee under the control of the Ct. to act either as sole trustee or jointly with other trustees.

CHAPTER VIII.

OF A MODERN CONVEYANCE.

Lease and Release.—Though in early law the possession of a lessee was merely that of a bailiff, yet after entry by him the interest of the lessor was merely an incorporeal hereditament. If he wished to transfer it, feoffment with livery of seisin was impossible, and the only method was a deed of *release*, which transferred the freehold as effectively as a feoffment.

In early times this method of conveyance was much used, a lease for one or more years being made, and upon entry of the lessee the freehold being transferred to him by release.

After the St. Uses an analogous method was used which did not require entry, namely, a bargain and sale followed by a release. A., by verbal contract, bargained and sold his freehold to B., and by the doctrines of Chancery as soon as A. received the purchase money he was seised to the *use* of B., who thus by the Statute obtained without entry and without feoffment the actual seisin and possession.

This was put an end to by the St. Enrolments (27 Hen. VIII. c. 16), which required every bargain and sale of freeholds to be by deed enrolled. The Statute did not, however, apply to bargains and sales of *leaseholds*. It remained, therefore, possible for A., being seised in fee simple, to bargain and sell his lands for one year to B., and on receipt of any consideration, however small, B. under the St. Uses became possessed of an estate at law for one year. This being done, A. had merely to release by deed to B. and his heirs all his estate in the land of which B. then became seised in fee simple.

This method was for over 200 years the common means of conveying lands. The St. Uses was employed only to give the lessee an estate at law without actual entry; the release operated at C. L. and must contain apt words for marking out the estate granted.

After the St. Frauds it was necessary that every bargain and sale should be in writing, as no pecuniary rent was ever reserved.

By an Act of 1841 it was provided that a deed of release should be effectual, although not preceded by a lease.

By the R. P. A. 1845, it was enacted that all corporeal tenements and hereditaments, as regards the conveyance of the immediate freehold, should be in grant as well as in livery. Since then a simple deed of grant has superseded all other methods of transfer.

In such a deed there is still the same necessity that the estate of the grantee should be marked out. But in deeds executed after 1881, by s. 51 of the C. A. 1881, it is sufficient to use the words "in fee simple," or "in tail male," or "in tail female," without the words "heirs," "heirs of the body," &c. But either the old words or the exact words of the Act must be used. A conveyance to A. simply without more would still give him merely a life estate.

In case of a grant—unless a consideration is expressed in the conveyance—it is still necessary that the conveyance should be made "unto and to the use of" the purchaser, otherwise the use, and by the Statute of Uses the legal estate, would *result* to the grantor.

The St. Uses was often employed to avoid the rule that a man cannot make a conveyance to himself.

Thus, before 1882, if A. wished to convey lands to himself and B. jointly, he could only do so in *one* instrument by conveying to B. and his heirs *to the use* of A. and B. and their heirs. Otherwise he must first convey to C., who would reconvey to A. and B. But by s. 50 of the C. A. 1881, freehold land may be conveyed *directly* by A. to A. and B. jointly. If, however, A. wishes to convey to himself alone, *e.g.*, to convey a fee simple to B., reserving a life interest to

himself, he can still do this in one instrument only by the St. Uses, *e.g.*, by a conveyance to B. and his heirs to the use of A. for life.

Registration.—To make a complete conveyance of lands in Middlesex or Yorkshire (including Kingston-upon-Hull) a memorial of the deed must by a Statute of 1708 be registered in the county register. By this Act all deeds of conveyance were void against any subsequent purchaser or mortgagee who registered a memorial of the transfer to himself before registration of the first transfer. In equity, however, a person who so registered with notice of a prior unregistered assurance was a trustee of his legal estate for the first transferee.

This still prevails in Middlesex, but by the Yorkshire Registry Act, 1884, registration is optional, and all assurances have priority according to the date of registration, except in case of actual fraud, mere notice of a prior assurance having no effect.

By the L. T. A. 1897, it was provided that by Order in Council registration may be made compulsory in any county or district and necessary for the acquisition of the legal estate. This only applies to conveyances on sale, and does not prevent the equitable estate passing. Under this Act orders have been made in respect of the City and County of London.

Lands situated within the jurisdiction of the Middlesex Registry become exempt from such jurisdiction on being registered under the L. T. Acts of 1875 and 1897, and registration in the county register is unnecessary.

A lease and release was an innocent conveyance, the purchaser getting the fee by release, which never operated as of wrong, but simply passed the actual estate of the person making the release. The same applies to a deed of grant; in this the word "grant" is the proper term to employ, though other words may have the same effect.

A feoffment with livery of seisin may still be made subject to the rules already given, and an estate may still be conveyed by *deed of bargain and sale* enrolled under the St. Enrolments.

Another possible method of conveyance is by *covenant to stand seised* of land to the use of another in consideration of blood or marriage. This also operates under the St. Uses.

A *release* is still the proper method of conveying an estate from a freeholder to one who is in actual possession. An *exchange* is now made by deed of grant or by order of the Board of Agriculture under the Inclosure Acts. *Surrender* of any estate other than copyhold or customary freehold must be by deed, except a surrender by operation of law. Conveyances may also be made under *powers* (p. 72), and, in case of registered land, by various statutory methods under the Land Transfer Acts.

CHAPTER IX.

OF THE DESCENT OF AN ESTATE IN FEE SIMPLE.

The personal representatives of a deceased man are (a) *executors* appointed by his will; (b) *administrators* appointed by the Court on intestacy. In them the whole of the deceased's personal estate vests at C. L., their duty being to apply it in payment of debts and to dispose of the surplus according to the will or the St. Distributions. To raise money for debts and legacies they have power to sell or mortgage any of the deceased's chattels, and their receipt is a good discharge to a purchaser or mortgagee, who need not inquire into the purposes of the sale.

Wills of personalty must be proved in the High Ct., and the probate copy is the only *evidence* of the executor's right to administer the estate. But his *title* depends upon the will; he may, therefore, before probate do ordinary acts of administration, for which evidence of his title is not required. The administrator's title is derived from the grant of letters of administration, which, however, relate back to the death. The letters of administration are the evidence of his title.

The powers of executors and (probably) of administrators are *joint and several*. If one of several executors dies, the office survives to the rest. On death of a sole executor, his executor, if he has appointed one, becomes also executor of the first testator. But on death of a sole executor intestate or of an administrator, there must be a grant to an administrator *de bonis non*.

Chattels specifically bequeathed pass to the executor, and do not vest in the legatee until the executor has assented, when they pass without conveyance; before assent the legatee

has merely a right to sue in equity for the administration of the estate and an equitable interest of which he can dispose, and which—if he dies before assent—will devolve upon his personal representatives.

Pecuniary and residuary legatees and persons entitled upon an intestacy have similar rights.

Realty at C. L. vested at once in the heir or devisee, but by the Land Transfer Act, 1897, real estate—except *legal* estates in copyhold—which is vested in any person *without a right in any other person to take by survivorship* vests in his personal representatives like a chattel real, notwithstanding any testamentary disposition. The personal representatives have the same powers over it as over a chattel real, save that—except by permission of the Court—all must concur in transferring real estate.

Realty is to be administered for payment of debts, &c. in the same way as personalty, but the order in which realty and personalty were formally liable remains unchanged.

Subject to the above the personal representatives hold the realty as trustees for the persons beneficially entitled; their title thus remains, but its nature is altered; the *legal* estate passes in the first instance to the personal representatives, and the heir or devisee has merely an *equitable* interest until they have conveyed to him or have assented to a devise. Conveyance or assent may be made subject to a charge in respect of debts which the personal representatives are liable to pay, and their liability then ceases. After one year the Court may order a conveyance to be made to the heir or devisee.

The Rules of Descent of a Fee on Intestacy since the Inheritance Act, 1833 :

1. The stock of descent is the *last purchaser*, i.e., the last person taking otherwise than by descent, escheat, partition, enclosure: from him the lands descend to his issue *in infinitum*.
2. Male issue is admitted before female.
3. Where there are males of equal degree of consanguinity to the purchaser the *eldest* only inherits. Females of equal degree take all together as *copar-*

ceners, so called because at C. L. they were the only joint tenants who could compel partition. There is no right of survivorship in coparcenary; the share of a coparcener descends like an interest in severalty.

4. All lineal descendants *in infinitum* of any person deceased represent their ancestor.

These four rules complete the descent of an *estail tail*.

By the Intestates Estates Act, 1890, where a man dies intestate and without issue his realty and personalty, if less than 500%. net, vest in his widow absolutely. If more than 500%. she is entitled to a first charge of 500%. thereon, in addition to any other interest she may have in his real or personal estate.

5. On failure of issue of the purchaser the inheritance goes to his nearest lineal ancestor.

- 6 and 8. Among ancestors the order is (a) father and all male paternal ancestors of the purchaser, the *nearest* taking first; (b) female paternal, the mother of the most *remote* male paternal ancestor taking first; (c) mother; (d) male maternal ancestors, the *nearest* first; (e) female maternal, the mother of the most *remote* male maternal ancestor taking first.

7. The half-blood of the purchaser, (a) if the common ancestor is a male, inherit after the whole blood of the same degree; (b) if the common ancestor is a female, take after her.

9. If all heirs of the purchaser be dead the inheritance goes to the heirs of the *person last entitled*, e.g., A. dies leaving an only son B. and no other heirs; B. dies intestate and without issue; B.'s *maternal* relatives will inherit. (22 & 23 Vict. c. 35, ss. 19, 20.)

These rules do not apply to personal estate.

Further, by s. 30 of the C. A. 1881, they do not apply to *freeholds* vested in a sole trustee or mortgagee, which always devolve on his personal representatives like a chattel real in spite of any testamentary disposition.

CHAPTER X.

OF A WILL OF LANDS.

BEFORE Hen. VIII. land could not be devised, except by virtue of some special custom, as in the case of gavelkind and lands held in burgage in certain boroughs. Indirectly, however, it might be effected by conveying the land to such uses as the person conveying might appoint by his will. This was rendered impossible by the St. Uses, but by the Sts. Wills, 1540 and 1542, tenants in fee simple were given the power of devising all their land held in socage and two-thirds of that held by knight's service. By 12 Car. II. c. 24, which made socage the universal tenure, the right of devising freeholds became universal.

By the **Wills Act, 1837**, all estates and interests in real property which would otherwise descend to the heir are devisable. By this Act no will is valid unless (a) it is in writing signed at the foot or end by the testator or some person in his presence or by his direction; (b) the signature is made or acknowledged by the testator in the presence of two or more witnesses *present at the same time*; (c) the witnesses have attested and subscribed the will in the presence of the testator.

By the St. Frauds, a bequest to a witness or his or her husband or wife rendered the signature of the witness invalid. Under the W. A. 1837, the signature is not invalid, but the *gift* is void.

Probate could not originally be granted of a will of realty alone; wills of realty and personalty required proof, but the probate was evidence only in respect of the personalty, the will itself being the only evidence in respect of the realty.

By the Ct. of Probate Act, 1857, the probate of a will was made admissible in case of a devise, and ~~by~~ a devisee or heir might be cited to attend proceedings in the Ct. of Probate, and would be bound thereby. Since 1875 these provisions apply to proceedings in the High Ct. By the L. T. A. 1897, probate may now be granted in respect of real estate only.

A will may be revoked (a) by marriage, except in one special case provided for by s. 18 of the Wills Act, 1837; (b) by destruction *with intent to revoke* either by the testator or some person in his presence and by his direction; (c) by any writing executed in the same manner as a will and declaring an intent to revoke, or by a subsequent will or codicil. Alterations in a will are inoperative unless executed in the same manner as a will, the signatures of the testator and the witnesses being either made in the margin opposite the alteration or annexed to a memorandum referring to the alteration.

A will is revoked as to property parted with by the testator during his life, unless it becomes his again before his death.

Before the W. A. 1837, a will of lands was considered as a *present*, conveyance to come into operation at death. Hence, if a man after devising lands parted with them, they would not, if re-acquired by him, become subject to his will, unless it was republished or revived. But, by s. 23 of the Wills Act, no subsequent conveyance prevents the operation of a will in respect of such devisable estate or interest as the testator had at his death.

By s. 24, every will is to be construed as taking effect from the date of the death unless a contrary intention appears. Hence *after-acquired* realty may now pass under a will. For the same reason a residuary devise formerly included only land not disposed of at the time of the will, but not *lapsed* devises. Now, unless a contrary intent appears, it includes devises which, lapsed, fail to take effect.

Lapse occurs where a devisee dies in the lifetime of the testator, and cannot be prevented by the gift being made to the devisee and his heirs.

By virtue, however, of the W. A. 1837, no lapse occurs—

- (a) In case of a devise of realty to any person for an *estate tail* where such person dies in the life of the testator leaving issue who could inherit under such entail. S. 32.
- (b) In case of a devise of more than a life estate to a *child or other issue* of the testator who dies in the life of the testator leaving children who survive the testator. S. 33.

In both these cases the devise takes effect as if the death of the devisee had happened immediately after that of the testator.

Construction of Wills.—The great maxim of construction is that the intention of the testator ought to be observed; but this is largely qualified by the numerous rules of construction which have been established. Further, where technical terms are employed, they are in general construed strictly.

Technical terms are not, however, necessary in a will as in a deed if the intent is clear. Thus a gift to "A. and his issue," or to "A. and his seed," may be sufficient to create an estate tail.

By s. 28 of the Wills Act, where real estate is devised without words of limitation, it passes the fee simple or other the whole estate of the testator, unless a contrary intention appears.

By s. 29 a further change was made. Previously, if lands were devised to A., and "in case he shall die without issue" to B., the Courts construed this as a gift of an estate tail to A. Now such words are to mean only a failure of issue in the lifetime or at the death of A., and not an indefinite failure of issue unless a contrary intent appears by the will.

The doctrine of *uses* and *trusts* applies to wills as well as to conveyances, and provisions are made by the Wills Act for determining the estate taken by trustees.

If a testator devises land to his heir-at-law, such person takes as devisee and not by descent, *i.e.*, he becomes a *pur-chaser* and the stock of descent. Before the Act he took as heir.

Originally, executors had no control over a devise of real estate unless the testator had given them any estate in or power over the same, *e.g.*, a power to sell for payment of his debts. By Lord St. Leonards' Act (22 & 23 Vict. c. 35), trustees in some cases, and in others executors, were empowered to sell realty when the testator had *charged* it with his debts or legacies. These provisions are now rendered unnecessary in the case of deaths after 1897 by the L. T. A. 1897.

Wills in Middlesex and Yorkshire require registration within six months of the death if the testator dies in the United Kingdom, or three years if he dies outside it; otherwise they are void against any subsequent purchaser or mortgagee for valuable consideration. But in equity a purchaser or mortgagee with notice of a devise could not obtain priority by prior registration (p. 39). By the **Vendor and Purchaser Act, 1874**, if such a will is not registered within the prescribed time an assurance from the devisee to a purchaser or mortgagee shall, if registered first, have priority over any assurance from the heir at law. By the **Yorkshire Registries Act, 1884** (p. 39), wills of lands in Yorkshire *may* be registered and have priority according to the date of the death of the testator if registered within six months of the death, otherwise according to the date of registration. Similar provisions are made for the registration of an affidavit of intestacy.

Duties.—Every person succeeding to a beneficial interest in realty is charged with duty according to his relationship to the deceased, varying from 1 per cent. to 10 per cent. **Succession Duty** is a first charge on the realty, and is also a debt due to the Crown from the successor. The duty is payable on the value of an annuity equal to the annual value of the property during the life of the successor or the time for which he is entitled, and is payable by eight half-yearly instalments. If the successor dies before all the instalments are paid, they cease to be payable, except where he has been competent to dispose by will of a continuing interest in the property, in which case they are payable by his successor.

✓ 1910
By the Finance Act, 1894, estate duty, graduated according to the value of the property, is paid on the principal value of all realty and personalty passing on intestacy, or by will or settlement on the death of any person dying after 1894.

Where property in respect of which estate duty is payable is settled by the will of the deceased, or having been previously settled by some disposition taking effect after August 1st, 1894, passes on the death of the deceased to some person not competent to dispose of it, a further duty of 7 per cent.—settlement estate duty—is due, except where the only life interest after the death of the deceased is that of his or her husband or wife.

Estate duty on real property is a first charge thereon, except as against a purchaser for value without notice.

Finance Act
1894
1910.

CHAPTER XI.

OF CREDITORS' RIGHTS.

Liability for Judgment Debts.—Alienation of land for debts may take place either in the tenant's life or, in case of estates of inheritance, after his death. As regards fee simple lands: By the *St. Westminster II.* a creditor having obtained judgment might by a writ of *elegit* obtain one-half his debtor's lands in execution; and after so taking the lands in execution he might, and still may, hold them as *tenant by elegit* until the debt be satisfied out of the rents and profits. 13 Edw 1

Under this Statute it was held that a creditor might take out of the hands of a purchaser from the debtor one-half not only of lands sold after the judgment, but even of lands *acquired* and sold after the judgment. By the **Judgments Act, 1838**, all the debtor's lands might be taken under a writ of *elegit*, and it was expressly provided that this should extend to all lands acquired after judgment, and that the judgment should be a *charge* on such lands, but should not affect purchasers, creditors, or mortgagees, unless *registered* according to the Statute. 142 Vict

Further changes were made by later Statutes, and now the effect of a judgment as a *charge* depends on the **Land Charges Act, 1900**, which provides that a judgment, whether obtained before or after the Act, shall not operate as a *charge* on land unless a *writ* or *order* for enforcing it is registered according to the provisions of the *L. C. Act, 1888*, in the Land Registry Office and re-registered every five years. By the **L. C. A. 1888**, every writ or order affecting land *and every delivery in execution* is void as against a purchaser for value of the land, unless the writ or order is registered in the Land Registry Office. A creditor, however, to whom land is actually delivered in 63 v 64 100

execution may, by the J. A. 1864, obtain an order for its sale.

Lands in Middlesex are now subject to the L. C. A. 1900, and registration in Middlesex is unnecessary, but by the effect of the **Yorkshire Registry Act, 1884**, an execution creditor should register his writ in Yorkshire to gain undisputed priority over any subsequent assurance.

Judgments of County Cts. and other inferior Cts. must be removed into the High Court before they can affect freeholds.

By the **Bankruptcy Act, 1883**, where a debtor is adjudged bankrupt the whole of his realty and personalty, including any *realty* which may be acquired by or devolve upon him before his discharge, vests in the trustee in bankruptcy, who has a power to sell it and divide the proceeds among the creditors. So also when a debtor enters into a *composition* or *scheme of arrangement* with his creditors under the Bankruptcy laws his realty may by its terms be vested in the trustee appointed thereunder.

If a debtor enters into any *private* deed of arrangement with his creditors and assigns his property for their benefit *generally*, the assignment is void unless registered in the Central Office under the **Deeds of Arrangement Act, 1887**, and is also void against a purchaser for value of any land comprised therein, unless also registered in the debtor's name in the Land Registry Office under the **L. C. A. 1888**.

Fee simple estates are also subject after death of the tenant to his debts contracted in life. From Edw. I. the rule was established that where a debtor had by deed under seal (termed a *special* contract or *specialty*) bound his heirs with payment of any debt, the heir was liable to pay the debt to the extent of the value of any lands descended to him from his ancestor. Such lands were called *assets by descent*.

Apart from this creditors could only obtain payment out of lands where the debtor had by his will made them subject to his debts (p. 47). In such cases the land was termed *equitable assets*, and the Cts. of Chancery allowed simple contract creditors to share equally with specialty creditors in the proceeds.

A debtor might, however—even if he had bound his heirs by specialty—defeat his creditors by devising lands to some person other than his heir. In this case the creditors originally had no remedy, but by the *Sts. Fraudulent Devises* (3 W. & M. c. 14, 11 Geo. IV. & 1 W. IV. c. 47), all such devises were made void against creditors by specialty in which the heirs were bound.

By Lord Romilly's Act (3 & 4 Will. IV. c. 104)—extending the provisions of an Act of 1807 which applied only to traders—all estates in fee simple which the owner had not by his will charged with or devised subject to payment of debts were made equitable assets, available for all creditors alike. But the order in which assets were liable for debts was unchanged, and the personal estate remains primarily liable; the effect of an actual charge or devise for payment of debts also remained the same.

Under this Act specialty creditors had priority over simple contract creditors, but this was taken away by *Hinde Palmer's Act* (32 & 33 Vict. c. 46).

Now under the L. T. A. 1897, realty is to be administered in the same manner as personalty, but the order of application is still unaltered, and the effect of a charge on realty is the same.

The remedies of a creditor on the death of his debtor are either to sue the personal representatives at law, and obtain judgment against the goods of the deceased, or to apply for the administration by the Ct. of the debtor's estate. A specialty creditor might also sue the heir or devisee for the debt, and now, probably, under the L. T. A. any creditor may sue the personal representative and obtain execution out of the debtor's lands. §. 115

Under the Bankruptcy Act, 1883, a creditor may, if the deceased was insolvent, obtain an order to have the estate administered in *bankruptcy*.

Crown Debts.—A Crown debtor's freeholds in fee simple may be seized in the hands of himself, his heirs or devisees. Formerly Crown debts, with some exceptions, formed a

charge on the lands of the debtor, but they are now governed by the L. C. Acts, 1888 and 1900.

Conveyances of land or goods for the purpose of delaying or defrauding creditors are by 13 Eliz. c. 5, void as against them, unless made for valuable consideration to a person taking in good faith and without notice of the fraud. Such conveyances are, therefore, of no avail against execution creditors, or a trustee in bankruptcy, or a creditor seeking to obtain payment after the death of the debtor.

Fraudulent conveyances are also under the bankruptcy laws void against a trustee in bankruptcy. And by the **Bankruptcy Act, 1883**, any voluntary settlement of property is void against the trustee if the settlor becomes bankrupt (a) within two years, (b) within ten years, unless at the time of making the settlement he was solvent without the property included therein, and all his interest passed to the trustee of the settlement upon the making thereof. But a *bond fide* purchaser for value from a beneficiary under such a settlement is not affected by the subsequent bankruptcy of the settlor, even though he knew the settlement was voluntary.

Estates tail could not originally be held under a writ of *elegit* for longer than the life of the tenant in tail against whom the judgment was obtained. But by the **J. A. 1838**, a judgment was made a charge on the lands as against the issue of the body of the debtor and any person whose interest he might have barred without the consent of any other person (p. 17). Now estates tail are governed by the **J. A. 1864**, and the L. C. Acts, 1888 and 1900. An estate tail may also be barred and disposed of upon bankruptcy to the same extent as it might be for the debtor's own benefit. But if the debtor die without any judgment being obtained against him, and not being insolvent, the lands cannot be made available to creditors except in case of certain Crown debts.

A life estate may be taken during the life of the life tenant, just as an estate in fee simple, and will vest in his trustee in bankruptcy; but it is not available after his death. Determinable life estates are not subject to the tenant's debts

after their termination. Estates *pur autre vie* are liable to alienation for debt during life like other freeholds, and after his death continue liable for his debts during remainder of the life of the *c. q. v.*

Trust Estates.—(a) Creditors may, under the J. A. 1838, obtain execution of all lands of which any person is seised or possessed in trust for the debtor at any time before or after judgment; (b) where the legal remedy by *elegit* is impossible they may obtain *equitable* execution, *i.e.*, the appointment by the Court of a receiver of the rents and profits of the debtor's equitable estates.

Trust estates are also governed by the J. A. 1864, and the L. C. Acts, 1888 and 1900, and can be made available in bankruptcy in the same way as legal estates. Trusts of fee simple lands descending to the heir were made *assets by descent* by the St. Frauds, and are now governed by the same statutes as legal estates and liable to the same extent for debts after death.

Trust estates are subject to Crown debts in the same way as estates at law. And in the case of equitable estates tail and for life the liability is the same as that of similar estates at law.

Lis Pendens.—Actions respecting lands bind a purchaser as well as the tenant's heir or devisee although he is ignorant thereof. But by the J. A. 1839, no *lis pendens* binds a purchaser or mortgagee unless registered and re-registered—now in the Land Registry Office—every five years.

CHAPTER XII.

OF PERSONAL CAPACITY.

ALL natural persons, including infants, lunatics, married women, convicts and aliens, are capable of purchasing and holding lands, and, as a general rule, of disposing of or making contracts with regard to land. To this rule there are certain exceptions.

Infants.—The purchase of land by an infant is *voidable* within a reasonable time after his coming of age, but remains good until repudiated. A conveyance by an infant—except under the custom of gavelkind—is also as a rule *voidable*. But by the effect of the **Infants' Relief Act, 1874**, a conveyance by an infant of land or goods by mortgage to secure repayment of money lent is *void*.

By the **Infants' Settlement Act, 1855**, a male not under twenty and a female not under seventeen may, with the sanction of the Ch. D., make a binding settlement of any property in consideration of marriage.

An infant's contract to purchase land is *voidable*.

During an infant's minority the custody of his estate is with his guardians *in socage* (p. 8) or *by statute*. The latter were created by 12 Car. II. c. 24 (p. 9), which on abolishing military tenure took away the right of wardship from the lords and gave the father the right of appointing by deed or will guardians to his children who were under age and unmarried.

By the **Guardianship of Infants Act, 1886**, on the death of the father of an infant the mother is guardian either alone or jointly with any guardian appointed by the father or the Ct. By the same Act a mother may appoint guardians to act after

her own and the father's death, and where guardians are appointed by both father and mother they act jointly. Where these statutes do not apply the old law of wardship in socage remains. Guardians may also be appointed by the Ch. D.

By the **S. L. A. 1882**, the powers of an infant life tenant may be exercised by the trustees of the settlement or such other person as the Court may order.

Contracts of a person who is **insane** or too **drunk** to understand their effect are *voidable* if the other party knew of his condition. A voluntary conveyance of land by a person of unsound mind is *void*, if for valuable consideration it is *voidable* if the other party knew of his condition; otherwise it is valid. A voluntary conveyance by a drunkard may be confirmed when sober; if for valuable consideration the same rules apply as in the case of a person of unsound mind.

The care of the property of idiots and lunatics is by the **Lunacy Act, 1890**, given to the Judge in Lunacy and entrusted to the *committee* of their estates or such other person as the judge may appoint.

Married women (Chap. XIII.).

Convicts are, by an Act of 1870, incapable of alienating or charging any property or making any contract, unless they are lawfully at large under a licence. An administrator of any convict's property may be appointed, in whom all his property will vest, revesting in the convict or his personal representatives on his pardon, completion of his punishment, death, or bankruptcy.

Aliens were formerly under incapacities, but by the **Naturalization Act, 1870**, may acquire, hold and dispose of every species of property in the same way as a natural-born British subject.

Corporations are fictitious bodies invested with the attributes of persons having corporate names by which they can sue or be sued and hold property, but enjoying immortality through the perpetual succession of their members. Corporations were at C. L. under no incapacity, but by the **Sts. Mortmain** are in general unable to hold lands except by licence from the

Crown or statutory authority. Thus every joint stock company under the Companies Acts has power to hold lands, but no company formed for science, charity, &c., or any other object not involving the acquisition of gain, may hold more than two acres without the consent of the Board of Trade. The capacity of a corporation to alienate lands depends upon its nature; many public and charitable corporations, *e.g.*, those subject to the Municipal Corporations Act, 1882, are restrained by statute from disposing of their lands.

Corporations created for specific purposes, *e.g.*, railway companies, cannot deal with their corporate property except for the purposes for which they were created. The capacity of a corporation to contract with respect to land is commensurate with its power of disposing of land.

A corporation could not stand seised of land to another's use. Hence in a grant of lands to a corporation to the use of another person, the legal estate remains in the corporation and is not transferred by the *St. Uses*. Since 1899 a corporation may hold property in joint tenancy; formerly a gift that would have rendered a natural person a joint tenant rendered a corporation a tenant in common.

CHAPTER XIII.

THE MUTUAL RIGHTS OF HUSBAND AND WIFE.

AT C. L. husband and wife became by marriage one person. The husband became entitled to the whole of the rents and profits of the wife's land and acquired a freehold estate therein during coverture. He also acquired the absolute property in her goods and chattels and a joint seisin of her freeholds. Further, if he had issue by his wife *born alive* (except in gavelkind, where the right extended to only one-half the wife's land and ceased on the husband's remarriage) *that could possibly inherit her estate*, he had after her death for the remainder of his own life an estate by the *curtesy* in all the lands and tenements of which his wife was *actually seised* in fee simple or in fee tail *in possession*.

The husband could, without the consent of the wife, dispose of the estate which he took by coverture or curtesy, and it was subject to his debts in his life. But he could make no disposition of her freeholds to endure beyond his own interest; if the wife survived, she resumed her rights, which could not be defeated by his debts.

If the husband survived, the wife's estates of inheritance descended to her heir or the heir of the purchaser, subject to the husband's estate by curtesy; she could make no disposition of them by will. As tenant by the curtesy, the husband now has the powers of leasing and sale given to a life tenant by the Settled Estates Act, 1877, and the S. L. A. 1882.

Husband and wife *together* might make any disposition of the wife's interest in realty which she could make if unmarried. Formerly this was effected by a *fine*, the wife being separately examined to ascertain if she was acting of

her own free will. By the **Fines and Recoveries Act, 1833**, a conveyance of freehold might be made by a married woman by a *deed* executed with her husband's concurrence and *acknowledged* by her before a judge of one of the superior Cts., or of any County Ct., or a Master in Chancery, or two commissioners, who were required to examine the wife separately as before the Act. Since 1882 an acknowledgment before one commissioner suffices. These rules now apply only to women married before 1883.

At C. L., if lands were given to A. and B. (husband and wife) and C., A. and B., being one person, took only one-half, and not two-thirds, as joint tenants with C. And this rule still survives. So also if land was given to A. and B. (husband and wife) and their heirs, they took not as joint tenants but by *entireties*; neither without the consent of the other could dispose of any part of the inheritance; unless they concurred in a disposition of it the survivor took the whole.

Again, at C. L. a man could not convey to his wife, but under the St. Uses he might convey to a third person to the *use* of his wife. And by the C. A. 1881, freehold may be conveyed by a husband or wife to the other either alone or jointly with any other person.

A man has always been able to devise lands to his wife.

In equity, if lands were held in trust for a wife for life or in fee simple or fee tail, but without a proviso for her separate benefit, the husband was entitled to receive the rents and profits, and acquired an equitable estate therein during coverture, subject to the wife's right in equity to have provision for her maintenance secured by a settlement of the rents and profits, or some part of them, in trust for that purpose. He also had the right to curtesy out of the wife's equitable estates of inheritance.

The wife's equitable estates could only be disposed of by both together in the same way as her legal estates.

In modern times, if property was vested in trustees on trust to apply the income for the *separate use* of a woman during coverture, the Cts. of Equity obliged the trustees to hold such income for the sole benefit of the wife, who

enjoyed the same powers of disposition over it as if she were unmarried.

If the income of property was given directly to the wife for her separate use without any trustees, the Cts. of Equity compelled the husband to hold his rights in the income as trustee for the wife.

The Cts. further allowed property settled to the separate use of a married woman to be so tied down that she should have no power during coverture to anticipate or assign the income. When property is subject to this restraint upon anticipation, any attempted disposition during coverture of the corpus or income not yet accrued due is void. Not only income, but also the *corpus* of any property, might be settled to a wife's separate use. And in 1865 it was settled that a gift of realty to a wife's separate use, with or without trustees, gave her power, without consent of her husband, to dispose of her whole *equitable* estate therein. This rule had been long established with regard to personalty. If the lands were vested in trustees for her separate use, she could require the trustees to convey the *legal* estate according to her directions; if there were no trustees, she conveyed by deed acknowledged, in which her husband was compelled to concur.

Also, if a wife made contracts with respect to her separate estate, her creditors might in equity have their claims satisfied out of any property which she was not restrained from anticipating.

§ 39

Under the C. A. 1881, a married woman may, if it is for her benefit, obtain an order of the Ct. enabling her to deal with property which she is restrained from anticipating.

It was finally settled that a husband should have curtesy out of the wife's separate equitable estates in fee if she died possessed thereof and intestate, but not if she disposed thereof in her life or by will.

Statutory Separate Property.—Originally a wife could have separate property only by act of parties, *e.g.*, by the express provision of those by whom the property was bestowed. The **Married Women's Property Act, 1870**, however, provided that

certain kinds of property should always belong to wives for their separate use, and the M. W. P. Act, 1882, completely altered the capacity of married women by providing—

- (1) that every married woman shall be capable of acquiring, holding, and disposing of any property as if she were a *feme sole*, without the intervention of any trustee;
- (2) that every woman married *after* the Act is entitled to hold and dispose of as her separate property all property belonging to her at the time of marriage or acquired by or devolving upon her after marriage;
- (3) that every woman married *before* the Act is entitled to hold and dispose of as her separate property all property to which her title has accrued after the Act.

But the Act is not to interfere with any settlement nor to affect any restraint upon anticipation.

If real estate, which by this Act is the separate property of a wife, is limited to her directly, the legal estate vests in her alone, and the husband does not acquire any right or estate therein. And now, if realty is limited to trustees on trust for a wife, her *equitable* estate therein is her separate property, although no trust for her separate use has been imposed. Subject to the L. T. A. 1897, the husband may still have curtesy of the wife's separate property of which she died intestate.

A wife may now dispose during coverture of her statutory separate property in the same way as a single woman without the necessity of acknowledgment or of her husband's concurrence—*unless* she is restrained from anticipation. Similarly, she may devise any legal estate in fee simple which is her separate property under the Act. The old rule of construction, however, remains that in gifts to husband and wife and a third person, the former take only one-half as joint tenants or tenants in common. But on a gift to husband and wife after 1882 they take as joint tenants and not by entireties.

Under the S. L. A. 1882, if a married woman tenant for life of land is entitled for her separate use, or as her separate property, she may exercise the powers given by the Act

without her husband; otherwise she and her husband exercise them. Restraint on anticipation does not prevent the exercise of such powers. ||

By the **M. W. P. A. 1907**, a married woman who is a trustee of any property may dispose of it as a *feme sole*.

Rights of Wife in Husband's Lands.—During the husband's life the wife obtained no interest in his land, but at his death she became in some cases entitled to a life interest in part thereof. Before the Dower Act, 1833, if any time during coverture the husband was *solely* seised *in possession* of a *legal* estate of inheritance in lands to which any issue which the wife *might* have had *might* have been heir, she was entitled at his death to have one-third (a) of the lands allotted to her to be enjoyed in severalty during the rest of her life. This right having once attached to lands, was independent of the husband's debts, and could not be defeated by any sale or devise by him unless the wife concurred therein and released her right. At C. L. this release could be effected only by *fine*, then under the Fines and Recoveries Act by *deed acknowledged*.

Dower might be prevented from attaching to newly-purchased lands by means of "*uses to bar dower*, i.e., the purchaser taking a conveyance upon such *uses* that he could never become seised of an estate to which it would attach.

The right might also be barred by the wife's acceptance before marriage of a jointure in lieu of dower. *Legal* jointure was first authorized by the St. Uses, under which dower might be barred by the wife's acceptance *before* marriage, and in satisfaction of dower of a competent livelihood of freehold, to take effect in profit or possession presently after the death of the husband for at least the life of the wife. If jointure was made after marriage, the wife must elect between jointure and dower. If, however, the wife was of full party and a party to the settlement, she might *in equity* extinguish her title to dower on any terms.

By the **Dower Act, 1833**, no widow is entitled to dower out

(a) In gavelkind her right was to one-half while unmarried and chaste.

of any land disposed of by the husband in his life or by will, or in which he has devised any estate or interest for her benefit unless a contrary intent appear by the will. And all interests and charges created by the husband, and all debts and encumbrances, are effectual to bar dower. He may also bar dower by any declaration or deed or by will; but the wife is given a right to dower out of lands to which the husband had merely a right and no legal seisin, and out of equitable estates except those of which he was joint tenant. The effect of the Act is to deprive the wife of her dower except as against the heir-at-law. The charge given to a wife by the Intestates Estates Act, 1890 (p. 43), must first be satisfied before she claims her dower.

A tenant in dower has the powers of a life tenant under the Settled Estates Act, 1877, but not under the S. L. A. 1882.

PART II.

OF INCORPOREAL HEREDITAMENTS.

CHAPTER I.

OF A REVERSION AND A VESTED REMAINDER.

Reversions and Vested Remainders.—If A., being tenant in fee simple, grants to B. a less estate than his own, *e.g.*, a lease for life or an estate tail, he disposes of a *particular* estate, *i.e.*, a part of his estate in fee, upon the determination of which estate the possession of the land will *revert* to himself or his heirs. During the continuance of the particular estate the interest of A. is termed a *reversion*. If A., having granted a particular estate to B., at the same time grants all or any part of his reversion to C., the estate so granted is termed a *remainder*. A remainder arises by express grant; a reversion simply by act of law.

A Reversion on a Lease for Years.—If A., being tenant in fee simple, grants merely a lease for *years*, he does not part with his feudal possession, and may therefore convey his reversion by feoffment with livery of seisin; but, as he parts with the actual possession, his estate is strictly incorporeal, and might therefore also be granted by deed.

But if A. make a lease for *life*, that being an estate of freehold, he parts with his seisin, and his reversion being purely incorporeal, could be conveyed only by deed of grant.

In the case of a lease for years, upon entry by the lessee, tenure—though not strictly free tenure—exists; the rent reserved is rent service, and is recoverable by distress like rent due from a freeholder. For reservation of rent service a deed was formerly not necessary; but, by the R. P. A. 1845, a lease which is required by law, *i.e.*, by the St. Frauds, to be in writing is void unless made by deed.

The C. L. remedy of *distress* was merely by seizing and

impounding goods found on any part of the premises; *sale* of goods seized was first authorized by 2 W. & M. c. 5. The remedy of distress belongs to the landlord at C. L. without express agreement, as also his right to sue the tenant personally for the rent.

Leases usually contain a condition of re-entry empowering the landlord, on default of payment of rent, to re-enter and determine the estate of the tenant. At C. L., before entry could be made or action brought on such a condition, the landlord was required to make a formal demand upon the premises of the exact rent due on the last day on which it could be paid. But by the C. L. P. A. 1852, if half a year's rent is in arrear and no sufficient distress be found, the landlord may, at the end of the period limited for re-entry, recover the premises by action without formal demand or re-entry. All proceedings must, however, cease if the tenant at any time before trial pays all arrears and costs. And by the C. L. P. A. 1860, a tenant may also obtain relief within six months after judgment, even where the landlord has recovered the premises by re-entry and not by action.

A condition of re-entry was formerly inalienable, but by 32 Hen. VIII. c. 34, it was provided that it should pass to the assignees, heirs, &c. of the lessor. And by the C. A. 1881, applying only to leases after 1881, it is provided that every condition contained in a lease shall be annexed to the reversionary estate in the land, and be enforceable by the reversioner.

Rent service being incident to the reversion passes upon the grant thereof. Formerly no grant could be made of a reversion—except by fine—without the consent of the tenant and his attornment to the grantee. This was abolished by 4 & 5 Anne, c. 3, s. 9, and the conveyance of a rent service is now effected by a grant by deed of the reversion. If such a conveyance is made to the tenant himself it is a *release*.

At C. L., rent service might be lost by the destruction of the reversion, *e.g.*, if A. was tenant of lands for a term of years, and B., his under-tenant, for a shorter term, the rent due by B. to A. was an incident of A.'s reversion. If A.

obtained the immediate fee simple, his term of years could not co-exist with but *merged* (a) into the larger estate, and the term being gone its incidents, including B.'s rent, disappeared. Now, in such a case, by the **R. P. A. 1845**, the incidents of the vanished term would attach to the fee simple, which is deemed to be the reversion expectant on the lease of B.

Remainders.—Between the owner of the particular estate and the remainderman no tenure exists, both deriving their estates from the same source, the grant of the owner in fee simple. There being no tenure no rent service is, therefore, incident to a remainder. A tenant in fee simple having the power to make a lease for years or for life, or a gift in tail or in fee simple, may create all these estates at the same time by limiting them to different grantees successively in any order, provided that the grantee of the fee simple takes last. Thus he may grant to A. for life, and after his decease to B. for life, and after his decease to C. for life, and before or after or between these grants he may grant estates tail or for years to other persons.

Where numerous estates are granted in this way it is probable that many of the grantees will obtain no benefit, *e.g.*, if A. survive B. and C. neither of them can take anything. Yet B. and C. each has an estate for life in remainder immediately vested in him which he can transfer by deed of grant like a reversion. *Whenever any estate is always ready from its commencement to come into possession the moment the prior estates determine it is termed a vested remainder.* The gift is immediate, but its enjoyment is postponed to the determination of the prior estates.

It is possible for one person to have more than one estate in the same land at the same time. The limitation of a remainder in fee tail or fee simple to a person who already has an estate of freehold, *e.g.*, for life, is governed by the **Rule in Shelley's Case**, which is, that *when an ancestor by any gift*

(a) Whenever a greater estate and a less meet in the same person without any intermediate vested estate, the lesser is said to be merged or drowned in the greater.

or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is "limited either mediately or immediately to his heirs in fee or in tail, the words 'heirs' or 'heirs of the body' are words of limitation and not of purchase"; that is, the heir takes merely by descent and has no separate or independent estate.

This rule was derived as follows:—The grantee of an hereditary fief was originally considered as entitled for his life only; a tenant in fee simple was a person holding to him and his heirs and could not prevent the estate descending to his heirs (p. 11). A gift expressly made to A. for his life, and after his decease to his heirs, was, therefore, considered identical with a gift to A. and his heirs, that is, a gift in fee simple. Similarly a grant to A. for his life, and after his decease to the heirs of his body, gave him an estate tail. Later, a tenant in fee or in tail acquired a right of alienation, but such words retained their effect of creating a fee simple or fee tail, and the words heirs or heirs of the body, which formerly gave an independent estate to the heirs, became merely words of limitation, marking out the estate of the grantee.

The same rule applied, even though an estate to some other person is interposed between the gift to A. and that to his heirs, *e.g.*, if lands were limited to A. for his life, and after his decease to B. for his life, and after his decease to the heirs of A. The heir claims only through his ancestor, who from the mere fact of having an estate which goes to his heirs can defeat their expedition, and, subject to B.'s life interest, can dispose of the whole estate. A., as long as B. lives, has two estates, an estate for life in possession, and an estate in fee simple in remainder, expectant on the decease of B. If B. dies in A.'s life, A. becomes tenant for his own life, with immediate remainder to his own heirs, *i.e.*, he is tenant to himself and his heirs.

The same rule would apply if the remainder were to the heirs of the body of A.; the limitation to the heirs of the body of A. would coalesce with his life estate and give him an estate tail in remainder, expectant on the decease of B., and

if B. died in his lifetime A. would become a tenant in tail in possession.

The same rules apply, however many intermediate estates are between that of the ancestor and the heirs, and even though some are estates in tail. Thus, if lands are given to A. for life, and after his decease to B. and the heirs of his body, and in default of such issue to the heirs of A., in such a case A. will have an estate for life in possession with an estate in fee simple in remainder, expectant on the determination of B.'s estate tail.

The same principles apply if the first estate is an estate tail.

The rule in *Shelley's Case* requires merely that an estate of *freehold* be taken by the ancestor, and not necessarily an estate for the whole of his life. Thus, if lands are given to A., a widow, during her life, provided she remain unmarried, and after her marriage to B. and his heirs during her life, and after her decease to her heirs, here A. has an estate in fee simple, subject to the remainder to B. for her life should she remarry.

But if the ancestor takes no estate of freehold the rule does not apply; if land is granted simply to the heirs of A., A. takes no estate by the gift, which is a gift of a future contingent estate to the persons who at A.'s death may be his heirs.

A reversion or vested remainder in fee simple is alienable by deed of grant or by will, and on intestacy it descends—subject to the L. T. A. 1897—to the heir of the last purchaser just as an estate in fee simple. An *estate tail* in remainder cannot in general be barred without the consent of the protector of the settlement, is not devisable and descends like a fee tail in possession.

CHAPTER II.

OF A CONTINGENT REMAINDER.

WITH certain restrictions, a tenant in fee simple may grant estates to commence in *interest* and not merely in possession at a future time. In such a case the land becomes inalienable, and is tied up for the benefit of the future owners, for until the future estates come into existence they have no owners to convey them.

Future estates are (a) **contingent remainders**, which can be created by any kind of conveyance; (b) **executory interests**, which can only arise by a will or a use executed by the St. Uses.

Contingent remainders were long regarded as illegal, but the rule was gradually relaxed, and by the time of Coke the validity of a gift in remainder to become vested on some future contingency was established.

A **contingent remainder**, as distinct from an **executory interest** (p. 71), is an estate which waits for the determination of the preceding estate; but as distinct from a vested remainder, it is one which is *not* always ready to come into existence directly the particular estate determines. Immediately it is ready to come into existence it ceases to be contingent. Thus, suppose a gift to A., a bachelor, for life, and on determination of that estate by forfeiture or otherwise in his life to B. and his heirs during the life of A., and after the decease of A. to the eldest son of A. and the heirs of the body of such son. Here B.'s estate, though small, is vested, always ready to come into possession, but the estate tail to the eldest son of A. is contingent, and depends upon A.'s having a son. As soon, however, as a son is born, the remainder is vested.

The chief rule for the creation of contingent remainders

is that the seisin must never be without an owner; every contingent remainder of freehold must have a particular estate of freehold to support it. Freehold could not be conveyed otherwise than by delivery of seisin; if on any feoffment the feudal possession was not parted with, it remained in the grantor. Thus, a conveyance made to-day to A. to hold from to-morrow was void. So, also, if a feoffment was made to A. for his life and after his decease, and one day to B. and his heirs, on the death of A. the feudal possession reverted to the grantor, and could not be taken out of him without a fresh conveyance, hence the gift to B. and his heirs was void. Again, if an estate be limited to A., a bachelor, for his life, and after his decease to his eldest son in tail, the son must be ready at once at A.'s death to take. But a child *en ventre sa mère* may now take an estate as if born.

The result of the first rule is that *every contingent remainder must become vested during the continuance of the particular estate on the very instant that it determines, otherwise it will fail*. Thus, if land be given to A. for his life, and after his decease to such son of A. as shall attain twenty-four, if no son of A. has attained twenty-four at A.'s death, the gift will fail altogether. However, an Act of 1877 (p. 77) now saves certain contingent remainders from failure.

A contingent remainder may be such that the future expectant owner is now living, *e.g.*, conveyance to A. for his life, and if C. be living at A.'s death, then to B. and his heirs. The estate of B. is a future estate *not* always ready to come into possession, for if A. die after C., B. and his heirs can take nothing. B.'s chance is termed a *possibility*, and could not originally be transferred; it might, however, be barred by deed, and might be released by B. to the reversioner. A contingent remainder limited to a living person and his heirs would descend on intestacy like a vested remainder, it was devisable, and is now governed by the L. T. A. 1897.

By the R. P. A. 1845, a contingent interest and a possibility, coupled with an interest in any tenements or hereditaments of any tenure, may be disposed of by deed.

Destruction of Contingent Remainders.—A contingent remainder was liable to destruction by the sudden determination of the particular estate on which it depended.

Thus, suppose lands given to A., a bachelor, for his life, and after his decease to his eldest son, C., and the heirs of his body, and, in default of such issue, to B. and his heirs. If A., before the birth of a son, *forfeited* his life estate, the contingent remainder to C. would be destroyed by the letting into possession the estate of B.

So also the possession of the remainder in fee simple would have been accelerated, and the contingent remainder destroyed if A. purchased B.'s remainder, and had it conveyed to him before the birth of a son, as the mere contingent remainder would not have prevented the *merger* of the life estate in the remainder in fee (p. 65, note).

In the same way the sale (*surrender*) by A. of his life estate to B. would have destroyed the contingent remainder.

The R. P. A. 1845, provides, however, that a contingent remainder shall not be liable to destruction through the determination of a prior estate by *forfeiture, surrender or merger*, (though, subject to the Act of 1877 (p. 77), it will still fail if not ready to come into possession when the particular estate would naturally have expired, or did naturally expire.

The destruction of a contingent remainder might be obviated by giving an estate after the determination of A.'s interest in his life to trustees and their heirs, during the life of A., as *trustees to preserve contingent remainders*. This vested estate interposed between the estates of A. and B. prevented their union, and so prevented the remainder in fee simple from coming into possession.

Contingent remainders of **trust estates** were indestructible as the feudal possession remained with the trustees. Thus, if a conveyance was made unto *and to the use of* A. and his heirs in trust for B. for life, and after his decease in trust for his first and other sons successively in tail, here the whole legal estate was vested in A., and nothing done by B. could destroy the contingent remainder.

CHAPTER III.

OF AN EXECUTORY INTEREST.

EXECUTORY interests are future estates which are indestructible, which do not depend upon but may put an end to prior estates.

Executory interests created under the St. Uses are *springing* or *shifting uses*. Before the statute if a feoffment were made to A. and his heirs to the use of B. and his heirs *from to-morrow* the Court would, contrary to the rules of law (p. 69), enforce the use. Here was a springing use, creating a future estate, arising of its own strength and not dependent on a prior estate. The same rule was followed after the St. Uses, and the legal seisin of lands might thus be shifted from one person to another without formalities. Thus, in a marriage settlement, if A. be the settlor, the lands are conveyed by him before the marriage to trustees (B. and C.) and their heirs to the use of A. and his heirs, until the marriage, and thereafter to the uses of the settlement, *e.g.*, to D., the husband, for his life, and so on. Here B. and C. take no estate; A. continues tenant in fee simple until the marriage, on which the seisin at once shifts from him to D. The interest of D., though future and contingent on marriage, is not a remainder, since it is to come after a fee simple, nor does it wait the determination of a prior estate. The use to D. springs up on the marriage and destroys the fee simple of A.

By means of a use a future estate can be made to spring up at any time. Where, however, a future estate must wait for the determination of a preceding, it is always a contingent remainder: nothing which can be regarded as a remainder will ever be construed as an executory limitation.

Powers are methods of causing a use with its accompanying estate to spring up at the will of any person. Thus land may be conveyed to A. and his heirs to such uses as B. shall appoint, and in default of and until such appointment to the use of C. and his heirs. Here B., though not owner of the property, has the power to dispose of it, and may appoint to the use of himself and his heirs.

And such a *general power of appointment* is so nearly equal to ownership, that except where it is exercisable by will only, the land subject thereto can be seized by B.'s creditors in his life under the J. A. 1838, and the power may be exercised for their benefit by B.'s trustee in bankruptcy. If the power is exercised in favour of a volunteer, the lands will also be liable for B.'s debts after his death.

But, apart from the above, if B. dies without making any appointment C. becomes indefeasibly entitled to the lands. Where a general power of appointment over realty is exercised by will the lands now vest in the executors under the L. T. A. 1897.

If, however, B. exercises his power and appoints the lands to use of D. and his heirs, D., by virtue of the *use* appointed in his favour, has at once an estate in fee simple in possession, and the estate of C. is at an end. The only power of B. is over the *use*; if, therefore, B. were to make an appointment to D. and his heirs *to the use of* E. and his heirs, D. would still have the use and the legal estate, though he would be a trustee thereof for E.

In exercising a power, the terms thereof and all the formalities required by it must be observed; if the power requires a will, it cannot be exercised by deed nor *vice versa*. But by Ld. St. Leonards' Act, 1859, a deed executed before and attested by two or more witnesses in the ordinary manner is a valid execution of any power of appointment by deed, although other formalities may have been directed by the instrument creating the power. This Act, however, only refers to the *mode* of execution and attestation; any other directions, *e.g.*, as to obtaining the consent of any person, must be observed.

Where, however, the intended appointee is a purchaser from the person intending to exercise the power, or is his creditor, wife, or child, or is a charity, Equity will relieve against the defective execution of a power.

Powers of appointment by will must be made in accordance with the W. A. 1837, and if so made are valid, though some other formality or different form of execution was required.

A man might always exercise a power of appointment in favour of himself or his wife, though he could not directly convey to himself or, before 1882, to his wife. A married woman might exercise a power of appointment without the consent of her husband. And—unless expressly forbidden—an infant may, under the I. S. A. 1855 (p. 54), make a valid appointment.

By the W. A. 1837, a general devise of the real estate of a testator includes realty over which he has a general power of appointment, unless a contrary intention appears in the will.

A power of appointment may exist with ownership, *e.g.*, where land is limited to such uses as A. shall appoint, and in default of such appointment to A. and his heirs. Here A. may dispose of the land either by exercising the power when his estate is destroyed or by conveying his estate when the power is extinguished.

Special Powers.—The estate to arise on the exercise of a power may be limited. Thus, where the estate of a life tenant was limited to him by way of *use*, a power might be conferred on him of leasing the land for any number of years. On the exercise of such a power, a use with its accompanying estate would arise to the tenant quite independently of the continuance of the life of the tenant for life. If the life tenant did not conform with the terms of the power, the lease was void, but by an Act of 1849, if made *bonâ fide*, and if the lessee has entered, is good in equity as a contract for a grant of a valid lease under the power. Express powers of leasing may still be created, but are largely superseded by the powers given by the S. L. A. 1882. Powers of *sale and exchange* were also commonly inserted in settlements, the trustees

having power for that purpose to *revoke* the uses of the settlement as to the lands so sold, &c., and to appoint to such uses as might be necessary. But it was provided that any money arising on sale or exchange should be laid out in other lands to be settled to the uses of the land, and this direction made the money real estate in equity, and the parties entitled under the settlement took the same estates therein as if actually so laid out. Such express powers are now unnecessary, owing to the S. L. A. 1882.

Extinguishment of Powers.—Powers may be extinguished by deed of release made by the donee of the power to any person having any estate of freehold in the land. By the C. A. 1881, a person to whom any power is given may by deed release it or contract not to exercise it. But the Statute does not apply where the *duty* of the donee may require him to exercise it at some future time, *i.e.*, where it is coupled with a trust.

By the Fines and Recoveries Act, 1833, a married woman may, with the concurrence of her husband by deed acknowledged, release any power as if she were a *feme sole*.

A power may, under the C. A. 1892, be disclaimed by deed.

The above rules do not, however, apply to *statutory* powers.

Executory Interests may be also created by Will.—The earliest instances probably occurred in directions that executors should sell lands devisable by custom. The sale operated as the execution of a power by the testators to dispose of the freeholds in which they had no ownership, and shifted the fee simple from the heir to the purchaser.

The Ct. of Chancery, also, in permitting the devise of the *use* of lands, allowed the creation of executory interests by will. By the St. Uses, wills of uses were abolished until restored by the St. Wills. The uses had then become legal estates, but, following the old rule, future estates at law were allowed to be created by will, and were given the attribute of indestructibility. These future estates were called **executory devises**. Thus, A. devises land to his son A., an infant, but

if A. dies under twenty-one, to B. and his heirs. A. has a fee simple in possession subject to an executory interest in favour of B.; if A. dies before twenty-one, nothing can prevent the estate of B. from coming into possession. The same effect might be obtained by a conveyance to uses, but *not* by a direct conveyance.

Difference between Contingent Remainder and Executory Devise.—Devise to A. for life, with remainder to the first son of B. who attains twenty-one. If A. survives the testator this is a contingent remainder, the limitation to the son of B. depending on the determination of the prior estate of freehold in A. If A. dies before the testator the will commences with the limitation to the son of B., which arises as soon as a son of B. attains twenty-one, and displaces the estate in fee simple, which descends to the heir-at-law of the testator. It is therefore an executory devise. Before 1877, if A. survived the testator, but died before any son of B. attained twenty-one, the limitation failed; now it does not.

By the R. P. A. 1845, all executory interests may be disposed of by deed. An executory interest given to A. and his heirs will devolve on his death like a contingent remainder limited in fee to an ascertained person.

Estates may also arise under **statutory powers**, *e.g.*, the powers given to a life tenant under the S. L. A. 1882, who may convey the whole legal fee simple in the settled land if comprised in the settlement, though he himself has merely an equitable estate for life. The estate limited by such a conveyance arises solely by virtue of the Act, and differs from the power to appoint a use taking effect under the St. Uses. Thus, if land is conveyed under a statutory power to A. and his heirs, to the use of B. and his heirs, B., not A., takes the fee simple at law.

CHAPTER IV.

OF REMOTENESS OF LIMITATION.

The rule against perpetuities requires every future estate limited to arise by way of shifting use or executory devise to be such as *must necessarily arise within the compass of existing lives and twenty-one years after*, allowing for gestation where some person entitled is a posthumous child. If no lives are fixed, then twenty-one years only is allowed.

Every executory interest which *might* in any event transgress these limits is void from its commencement, excepting only executory limitations in defeasance of or preceded by an estate tail. Thus, a gift by way of shifting use or executory devise to the first son of A., a bachelor, who shall attain twenty-four, is void for remoteness, for if A. died leaving a son a few months old, the estate of the son could not arise within twenty-one years after A.'s death.

By the C. A. 1882, where a person is entitled to an estate of freehold, with an executory limitation over on failure of issue, the limitation becomes void as soon as any such issue shall attain twenty-one.

Restriction on Accumulation.—By the Thellusson Act (39 & 40 Geo. III. c. 98) the accumulation of income is forbidden for any longer term than (a) the life of the grantor or settlor, or (b) twenty-one years after his death, or (c) the minority of any person living or *en ventre sa mère* at the death of the grantor, &c., or (d) the minority of any person who under the settlement would, if of full age, be entitled to the income directed to be accumulated. But the Act does not extend to provisions for payment of debts or raising portions, or any directions touching produce of timber or wood, nor to trusts

for expending income on repairs. Any direction to accumulate, which exceeds the period allowed, is valid up to the time allowed, but void for the excess. But if the direction exceeds the perpetuity rule it is void altogether. By an amending Act of 1892 the accumulation of income for the purchase of land is allowed only for the fourth of the above periods.

Rules governing Contingent Remainders.—Every contingent remainder must be supported by a particular estate of freehold (*ante*, p. 68), and must therefore vest during or immediately on the termination of the particular estate. From the consequences of this rule the **Contingent Remainders Act, 1877**, saves every contingent remainder created after its date, which would have been valid if originally created as a shifting use or executory devise.

But for a limitation to be good as such, it must conform to the perpetuity rule. Thus, if land be limited to A., a bachelor, for life, and on his death to his first son who shall attain twenty-four, if A.'s son die before attaining twenty-four, the limitation to him will fail as a contingent remainder. And it will not be saved by the Act of 1877, being outside the perpetuity rule.

Perpetuity in the Case of Contingent Remainders.—In this case the rule adopted was that an estate given to an unborn child for life cannot be followed by any estate to any child of such unborn person. And in 1889 it was settled that this is an independent rule of law, and that such a remainder would be void although expressly confined to such child of the unborn parent as should be born within the compass of lives existing at the time of the gift.

Cy-près Doctrine.—In case, however, of a gift by will to the unborn son of some living person for his life, and after the decease of such unborn person to *his* sons in tail, the Court will carry out the intention of the testator by giving such son an estate in tail. This doctrine is applied only where the estates given to the unborn child are estates in tail.

In 1889, also, it was further established that a contingent remainder limited to take effect after a contingent remainder

is void unless it must vest within the time allowed by the perpetuity rule. This, however, does not apply to a contingent remainder limited to take effect on the termination of an estate tail originally limited as a contingent remainder.

Contingent remainders of trust estates are governed by the perpetuity rule. Thus, if land be conveyed unto and the use of trustees and their heirs on trust for A. for life, and after his decease for such son of A. as shall attain twenty-four, the limitation to the son of A. is void.

For the purpose of the perpetuity rule the vesting of estates arising under special powers is reckoned from the date of the instrument creating the power, but in the case of general powers from their execution.

By the J. A. 1838, judgments were made a charge on reversions and remainders, and the L. C. A. 1900, now applies to them. But an estate in reversion or remainder expectant on a freehold cannot be taken under a writ of *elegit*. Contingent or executory interests vest in a trustee in bankruptcy, and are liable for the owner's debts after his death. On a future estate falling into possession succession duty is payable under the Succession Duty Act, 1853, and estate duty under the Finance Act, 1894.

CHAPTER V.

OF HEREDITAMENTS PURELY INCORPOREAL.

PURELY incorporeal hereditaments are (a) *appendant* and (b) *appurtenant* to corporeal hereditaments—both of which pass by the conveyance of the corporeal hereditament; (c) in *gross*, which require a deed for their transfer.

Class (a) includes (i) a *seignory*, *i.e.*, the lordship (without any *reversion*), which remained in the lord of a manor, who granted part of the lands in fee simple. To this seignory the rent and fealty due from the tenant were incident, the land being holden of the manor. The Statute of Quia Emptores (p. 6) left untouched any existing tenancies in fee simple, and where lands are so held the seignory is an appendage to the manor and passes under a conveyance of it.

(ii) Rights of *common*, as common of *turbary*, common of *piscary*, and common of *pasture*, *e.g.*, the right of free tenants of a manor to pasture their cattle on the waste lands, or to take turf, &c. therefrom.

(iii) Advowsons appendant to a manor (p. 82).

Strips of waste at the side of a road, and the soil of the highway to the middle of the road, presumptively belong to the owner of the adjacent land on either side, and pass therewith. The same applies to the soil of a river, except a tidal river, in which the soil to high water mark belongs to the Crown. The Crown is also presumptively entitled to the soil of the seashore to high water mark.

Class (b) includes incorporeal hereditaments not naturally appendant to corporeal hereditaments, but annexed to them by express grant or prescription, *e.g.*, rights of way. Where so annexed they pass at C. L. by conveyance of the corporeal

hereditaments. If not strictly appurtenant to the lands, though enjoyed therewith, they did not so pass without express mention; but now, by the C. A. 1881, a conveyance of land includes all commons, ways, easements and rights, reputed to appertain to the land or enjoyed therewith.

Class (c) includes (i) a *seignory in gross*, one severed from the demesne lands of the manor to which it was formerly appurtenant.

(ii) A *rent seek*, a rent for which no distress could be made. This might arise where a landlord granted away his rent service independently of the seignory or reversion to which it was incident, or where a *rent-charge* was made without a clause of distress. But by 4 Geo. II. c. 28, s. 5, a remedy by distress was given for rent seek. Apart from distress, however, a grantee who had received any part of the rent had a real action against the tenant, and when such real actions were abolished he was allowed to sue the tenant personally.

(iii) A *rent-charge*.—This arises on a grant by A. to B. of an annual sum of money payable out of lands in which A. has any estate, with power to distrain. A rent-charge cannot continue longer than the life of the grantor, but if he be seised in fee simple may be of any estate, *e.g.*, for a term of years or in fee simple. It can be created or transferred only by deed or will. Annuities or rent-charges for life granted otherwise than by marriage settlement or will require registration under the J. A. 1885, in order to affect any lands as against a purchaser or mortgagee without notice thereof.

By the L. C. A. 1888, rent-charges created after the Act under the Improvement of Land Act, 1864, are also void against a purchaser for value unless registered.

Rent-charges in settlements are usually created under ss. 4 and 5 of the St. Uses, which applied to *uses* of rent-charges the same rule as to uses of estates. If, therefore, land is conveyed to A. and his heirs to the use that B. and his heirs may receive a rent-charge in trust for C. and his heirs, the Statute vests the legal estate in B.; but he is merely a trustee for C., who has the equitable estate in fee simple in the rent-charge.

In granting a rent-charge it was necessary to give the grantee an express power of distress or the rent was merely a rent seck. It was also usual to give the grantee a power to enter on non-payment of rent, and to receive the rents and profits until all arrears and expenses were paid.

Now by the C. A. 1881, s. 44, any person entitled to a rent-charge or annual sum—not being rent incident to a reversion—charged upon land by any instrument coming into operation after 1881 has—unless a contrary intention is expressed in the instrument—a power (1) of distress if the rent or any part is unpaid for twenty-one days; (2) if unpaid for forty days to enter and take the income until arrears are paid; and (3) whether possession be taken or not to demise all or part of the land to a trustee for a term of years on trust to raise all arrears and expenses.

By the Imp. of Land Act, 1889, rent-charges created under the Imp. of Land Act, 1864, are recoverable only in the above methods, and not by personal action.

Estates *pur autre vie* in rent-charges and other incorporeal hereditaments are subject to the W. A. 1837 (*ante*, p. 23), and the L. T. A. 1897. An estate *in fee simple* in lands is often disposed of for building purposes in consideration of a rent-charge *in fee simple* by way of ground rent. A conveyance is made to the purchaser and his heirs to the use that the vendor and his heirs may receive a certain rent-charge, and subject thereto to the use of the purchaser, his heirs and assigns for ever. The purchaser thus acquires an estate in fee simple, subject to a perpetual rent-charge.

A rent-charge was formerly indivisible, and a release of part of the land from the charge was a release of the whole. But by 22 & 23 Vict. c. 35, a release is limited to the part actually released. The Board of Agriculture also now has a power to apportion rents of every kind on the application of any person interested in the land or rent.

Such rent-charges are usually further secured by a covenant for payment by the purchaser, which is, however, only enforceable against the purchaser or his representatives, and

not against his assigns. But the rent-charge may be recovered by action against the actual tenant for the time being, whether the purchaser, his heir or his assign.

By the Bankruptcy Act, 1883, a trustee in bankruptcy may *disclaim* any property of the bankrupt which consists of land burdened with onerous covenants, and the Ct. may make an order vesting such property in any person entitled thereto.

Incorporeal hereditaments are in general subject to the same rules as corporeal; they may be held for the same estates, and are alienable and devolve in the same way. In one respect they differ. Land is the subject of tenure, and rent service is an incident of the estate to which it belongs. But an estate in a rent-charge is incident to nothing; it cannot be subject to any tenure, nor originally could there be any escheat on the death of the owner. Now, by the Intestates Estates Act, 1884, the law of escheat applies to legal and equitable estates in incorporeal hereditaments, just as to legal estates in corporeal hereditaments.

(iv) **A Right of Common in Gross.**—A right of common possessed by a person as an independent subject of property, and not as appendant or appurtenant to any lands of his own.

(v) **An Advowson in Gross.**—An advowson is a perpetual right of presentation to an ecclesiastical benefice. The owner thereof is the patron of the benefice, and exercises his right by a *presentation* to the bishop of some qualified nominee whom the bishop is bound to *institute* to the benefice and cause to be *inducted* into it.

When the advowson belongs to the bishop it is *collative*. In some cases of advowsons *donative* the patron's deed of donation was sufficient, but by the Benefices Act, 1898, all such advowsons were made presentative.

Advowsons are (a) of *rectories* which were originally appendant to some manor and part of the manorial property of the lord who endowed the church. Advowsons in gross arose chiefly on the severance of advowsons appendant from the manors to which they belonged. Any advowson may

now be severed from the manor, and then becomes an independent incorporeal hereditament. While appendant it passes by a conveyance of the manor; if severed it requires a deed of grant.

(b) of **vicarages**. Advowsons were often granted to spiritual corporations, who became patrons thereof, but left the duties to be performed by a priest as their *vicar*. Hence arose vicarages, the advowsons of which at first belonged to the owners of the rectories as appendant thereto, but have in many cases become advowsons in gross.

The sale of an advowson does not include the right to the *next presentation* unless made when the church is *full*. The sale of a present right to present would be *simony*. But formerly, before a vacancy actually occurred, the next presentation might be sold, and when so sold was personal property. The advowson itself devolves like a fee simple estate, subject to the L. T. A. 1897. Now by the **Benefices Act, 1898**, any sale or grant of the next presentation, or anything less than the whole advowson, is void, though in a family settlement a life interest may be reserved to the settlor.

(vi) **Tithes** were the exclusive property of the Church until the dissolution of monasteries by Henry VIII., when grants of their property, with tithes, were made to laymen. And as the grants were made to the grantees and their heirs, or heirs of their bodies, tithes became hereditaments in which estates might be held, and by 32 Hen. VIII. it was directed that they should be transferred by the same assurances as corporeal hereditaments. So, also, they descend in the same way, but are not affected by any custom; nor is there any merger if tithes and land are owned by the same person, nor will they pass on a conveyance of the land unless expressly mentioned.

Under the Commutation of Tithes Acts, a rent-charge has been substituted for tithes in kind, and provision is made for the merger of tithes or the rent-charge in the land.

By the Tithes Act, 1891, tithe rent-charge is recoverable only by an order of the County Court of the district where the lands are situate, enforceable by distress and entry if the lands are occupied by the owner, otherwise by the appointment of a receiver. Only two years' arrears can be recovered, and no one is personally liable for the payment thereof. Tithe rent-charges devolve like other realty.

PART III.

COPYHOLDS.

COPYHOLDS are lands holden by *copy* of Court roll, *i.e.*, the roll in which a record is kept of all the proceedings in the Court of the manor to which the lands belong. Copyhold tenure grew out of villenage (pp. 7, 8). At the Conquest the *villanus* was personally free, but later the condition of the peasantry became depressed; and by the 13th century a clear distinction had arisen between socage, which had become freehold, and the tenure of the ordinary *villanus*, whose services were held to be servile.

As a result, the *villanus* became personally unfree; a free man might, however, hold land by villein *tenure*, and hence the word *villanus* was used to denote either a tenant in villenage, whether bond or free, or one who was in personal condition a bondman; later still it was confined to the latter meaning.

In the 13th century villenage was (1) *pure*, where the services were uncertain and unlimited; (2) *privileged*, where, though still servile, they were fixed by agreement. Tenant in villenage held in the name and at the will of his lord who was seised of the land; if ejected by his lord, he had in (1) no legal rights against him, in (2) his agreement gave him a right to sue his lord personally.

Villein *socage* was the tenure of lands of manors in the ancient demesne of the Crown by fixed and servile services. Such tenants were personally free, and could not be ejected while they performed their services, but their possession was not protected in the King's Ct. nor could they alienate their holdings.

Growth of Copyhold.—The will of the lord was largely controlled by custom, and the maintenance of customary rights was preserved in the manorial Court, of which all the villagers, bond and free, were judges, and in which the possession of a *villanus* was protected against everyone but his lord. As customs developed into rights, and personal bondage died out—owing largely to the commutation of labour services for money rents—villenage developed into copyhold. *Sub* Edw. IV. Littleton describes the tenant by copy of Court roll as holding lands in fee simple, fee tail, or for life, at the will of the lord, according to the custom of the manor, in virtue of an immemorial custom within the manor. By this time the Court held for customary tenants was distinct from the Court Baron, the lord only or his steward being judge of the Customary Court. Gradually the interests of copyholders developed into customary *estates*, secured by rights which could be enforced in the King's Courts instead of by custom. Under Hen. VI. it was said that a tenant by copy of Court roll should have a remedy in Chancery against his lord who dispossessed him; and under Edw. IV. his rights against his lord were, to some extent, recognized at law, but they were not finally secured until Elizabeth, when it was decided that a copyholder might recover possession from his lord as well as from a stranger in an action of ejectment which he could bring at C. L.

CHAPTER I.

OF ESTATES IN COPYHOLD.

STRICTLY, a copyholder remains a tenant at will. The seisin and feudal possession remain in the lord who has the legal estate in fee simple controlled only by the custom of the manor. The lord also has the right to all mines and minerals and timber, though he cannot come upon the lands to open mines or cut timber without leave of the copyholder. Again, if a tenant, without his lord's consent, granted a lease of his lands beyond a year, it would be a cause of forfeiture unless permitted by special custom. So also a copyholder may not commit *waste*, either voluntary or permissive; he has merely a customary right to occupation, and if he exceeds this right it is a cause of forfeiture.

The same incidents belong in general to customary freeholds, a tenure by copy of Court roll but not held at the will of the lord. Such customary tenants not having the freehold are successors of tenants in pure villenage on manors of ancient demesne.

While the copyholder with regard to the lord is strictly a tenant at will, he stands, when admitted, with respect to other copyholders in a similar position to a freeholder who has the seisin. The legal estate is in him, and he may hold customary estates analogous to those in freeholds, *e.g.*, in fee simple, in tail, or for life.

On every change of tenancy by death or alienation, and occasionally on change of the lord, a *fine* is payable to the lord. Such fines are now in general restricted to two years' improved value of the land, deducting quit rents. Free power of alienation appertains to an estate in fee simple in copyholds.

Estates Tail in Copyholds.—The *St. De Donis* (p. 15) did not apply to copyholds. Where an estate was given to a copyholder and the heirs of his body, then (a) if there was in the manor no custom to entail, the donee took an estate analogous to the fee simple conditional at C. L., (b) if there was a custom to entail, the estate was originally inalienable, but later might be barred according to the custom of the manor by a customary *recovery*, or by forfeiture and regnant, or by surrender.

Now, under the Fines and Recoveries Act, 1833, a customary estate in fee simple is barred by conveyance by surrender. Where the estate tail is in remainder, the consent of the *protector* may be given either by deed or by his concurrence in the surrender.

Estates pur autre vie in Copyholds, in case of the death of the grantee during the life of the *c. q. v.*, formerly passed to the lord during the residue of the life of the *c. q. v.*, and no one could hold them as *general occupant* (p. 22), but now they are governed by the W. A. 1837.

Copyholds are now subject to the debts of the tenant during his life in the same way as freeholds and are governed by the same statutes; they will vest in his trustee in bankruptcy who need not be admitted but may deal with them as if they had been surrendered to such uses as he might appoint, and any appointee of his must be admitted accordingly.

Legal estates in copyhold or customary freehold are not, either in respect of liability for the debts, &c. of a deceased tenant nor in respect of their devolution, affected by the L. T. A. 1897. Subject to any special custom they devolve according to the Inheritance Act, 1833; the heir is not, however, tenant as against the lord until he has been admitted. Fealty and suit of Court are due from a copyholder, and the lands will escheat to the lord on failure of heirs. When a copyholder in fee aliens the land in tail or for life, the alienee does not hold of him as in the case of freehold but of the lord.

Heriots.—Before the Conquest it was the custom for the

freeholder to furnish his tenant in villenage with oxen, a cow, sheep, and implements of husbandry. These reverted to the freeholder on the tenant's death, and were usually transferred to the new tenant. In time it became customary that the tenant's heir should succeed him, and that the landlord should take into his own hands, not the whole stock, but only the best beast or other chattel called a heriot, after the analogy of the heriot proper, which was a tribute due to the King on the death of an eorl or thegn. The right of the lord is now limited to such a chattel as the custom of the manor permits him to take, and in some cases merely to a money payment.

All kinds of estates in copyhold may be held in joint tenancy or tenancy in common, and in the former case the admittance of one is the admittance of all. By the Copyhold Act, 1841, the Court of Chancery was given jurisdiction to compel partition of copyhold.

Enfranchisement is the conversion of a copyhold estate into an estate of freehold. At C. L. it is effected by agreement between the lord and the tenant, the terms thereof being matter of agreement between them. But by the Copyhold Act, 1894, provisions are made both for *voluntary* and *compulsory* enfranchisement, the latter at the instance of either lord or tenant. If the parties cannot agree, the compensation is settled by valuation, and may take the form of a rent-charge to issue out of the enfranchised land. Enfranchisement under the Act does not, apart from express agreement, affect the lord's rights to minerals or escheat or the tenant's rights of common.

By the S. L. A. 1882, a tenant for life of a manor has power to enfranchise.

CHAPTER II.

OF THE ALIENATION OF COPYHOLDS.

ALIENATION is by surrender into the hands of the lord and admittance by him of the alienee. Formerly this must take place in the Customary Ct. of the manor, to constitute which at least two copyholders were necessary, or if made out of Court, *presentment* of the transaction must be made by the *homage* (i.e., the copyholders present) at a subsequent Ct.

By the Copyhold Acts of 1841 and 1894, Customary Cts. may be held without the presence of any copyholder; presentment by the homage is also rendered unnecessary, and a simple entry of a surrender on the Ct. rolls suffices.

The surrender is made to the lord to the use of the alienee for any estate which it may be wished to convey; if made in Ct. it is entered on the Court rolls, a copy of which is given to the purchaser as a muniment of his title; if made out of Ct., a memorandum in writing is signed and entered on the Ct. rolls.

A surrender might always be made by a man to the use of his wife. Lands of a married woman might be surrendered by her husband and herself after her separate examination. By the Vendor and Purchaser Act, 1874, a married woman who is bare trustee of copyhold may surrender it as if she were a *feme sole*. If it is her separate property under the M. W. P. A. 1882, she may surrender it as a *feme sole*. On surrender, the surrenderor continues tenant to the lord until the admittance of the surrenderee, who has a right to procure admittance, and then becomes at once tenant to the lord and is bound to pay the customary fine. The admittance relates back to the surrender, and would displace the previous

admittance of a subsequent surrenderee. Admittance must formerly be within a manor, but by the Copyhold Act, 1894, may be made by the lord or the steward out of the manor without holding a Court.

Alienation by will was formerly effected by a surrender to the use of the will. The will formed part of the surrender, and no particular form was necessary. By 55 Geo. III. c. 192, a devise was rendered valid without any previous surrender to the use of the will. By the W. A. 1837, a will of copyholds must be executed in the same way as one of freeholds. Formerly the devisee, before admittance, was required to make a *presentment* of the will at the next Customary Ct. after the death. Now the mere delivery of a copy of the will to the lord or steward is sufficient to authorize its entry on the Ct. rolls, and the devisee may be admitted at once.

If, on the death of a tenant, no one claims as heir or devisee, the lord, after making proclamations at three successive Courts, is entitled to seize the lands *quousque*, i.e., until some person claims admittance, or in some cases to seize it absolutely. Special provisions have been made by statute for protecting infants, married women and lunatics entitled to admittance.

The *St. Uses* has no application to copyholds. A person does, by surrender of copyhold to his *use*, obtain the seisin, which remains always in the lord. But where a surrender is made to the *use* of any person, the lord is merely an instrument for effecting the alienation, and his title is immaterial. If, however, a surrender be made for one person to the use of another on trust for a third, the surrenderee would be compelled to perform the trust as in case of freehold. This method is adopted in settlements of copyhold estates in which equitable estates may be created, as in freeholds.

An equitable estate tail in copyholds may be barred by deed as freehold, the deed being entered on the Court rolls of the manor.

On death of a sole trustee of copyholds who has been admitted, his estate does not devolve on his personal repre-

sentatives like freehold, but on his customary heir. Equitable estates in copyhold are subject to the L. T. A. 1897.

The owner of an equitable estate in copyholds not being tenant cannot make a surrender except that (a) a tenant of an equitable estate tail may bar the entail by surrender as well as by deed; (b) a husband and wife may surrender the wife's equitable estates after her separate examination in the same way as if her estate was legal, as well as by deed acknowledged under the Fines and Recoveries Act, which need not be entered on the Court rolls.

If the equitable estate belong to the wife for her separate use, or as her statutory separate property, she may dispose of it as a *feme sole*.

If copyhold fall into the hands of the lord he may regrant them as copyhold, but if he once make any conveyance at C. L., his power to grant by copy is for ever destroyed.

Remainders may be created of copyhold as of freehold, and unless there is a special custom to the contrary the admission of the life tenant is the admission of all remaindermen. A vested estate in remainder may be conveyed by surrender and admittance. Contingent remainders were not liable to destruction by the premature determination of the particular estate being preserved by the freehold vested in the lord. But if not ready to come into possession when the particular estate expires regularly they will fail, unless protected by the Contingent Remainders Act, 1877.

Executory devises of copyholds have long been permitted as of freeholds. When directions are given to executors to sell copyholds of their testator, the executors need not be admitted, the purchaser from them alone requiring admittance.

Husband and Wife.—A husband possessed the same rights over his wife's copyholds as her freeholds. But by the M. W. P. A. 1870, rents and profits of copyhold or customary freehold descending on a woman married after the Act as heiress of an intestate were made her separate property. And by the Act of 1882 a married woman holds any copyhold which is her separate property under the Act, and the rents and profits thereof as a *feme sole*.

A special custom is required to entitle a husband to curtesy of or to give a wife any interest after her husband's death in copyholds. In the latter case such interest is termed free-bench, and is usually a life interest in one divided third and paramount to debts. It does not usually attach until the death of the husband, and may be defeated by a devise of the lands. It is not governed by the Dower Act, 1894.

PART IV.

PERSONAL INTERESTS IN REAL ESTATE.

CHAPTER I.

OF A TERM OF YEARS.

Terms of years are (a) those created by ordinary leases subject to a yearly rent; (b) long terms created under settlements, wills or mortgages, in which no rent is usually reserved, and the object of which is to secure the payment of money by the owner of the land. All terms of years of whatever length possess the same attributes.

A **tenancy at will** may be created by parol or deed. The lessee may be turned out at his landlord's pleasure, or leave at his own; he is not answerable for permissive waste, and has a right to emblements. A lease at an annual rent made generally without expressly stating it to be at will, and without limiting any certain period, is not a lease at will but from year to year.

A **tenancy at sufferance** is where a person who came into possession by a lawful title holds on after its determination.

In a **lease from year to year** both landlord and tenant are entitled to *notice*. This, at C. L., must be given at least half a year before the expiration of the current year, except in cases under the Agricultural Holdings Act, 1883, in which a year's notice expiring with a year of tenancy is necessary, unless by contrary agreement in writing, except where the tenant is bankrupt or has compounded with his creditors. Under the Act a landlord may give a tenant notice to quit

part of the land in order to effect certain specified improvements, but the tenant may by notice in writing accept the same as notice to quit the whole. The parties to any lease from year to year may, however, make an agreement for any notice, *e.g.*, three months to be given on any day.

A lease of a separate *incorporeal* hereditament always required a deed, and by the R. P. A. 1845, a lease required by law, *e.g.*, by the St. Frauds (p. 27), to be in writing of any tenements or hereditaments is void *at law* unless made by deed. But such a lease may be valid as an agreement to grant a lease, and since the Judicature Acts a tenant under an agreement for a lease *which he might enforce specifically in equity*, is to be treated as if he were tenant at law upon the terms of the agreement, and is practically in the same position as if he had a lease by deed. No formal words are necessary to make a lease for years. There is no limit to the number of years for which it may be granted, but it must have a time fixed at which it is to begin—which may be a future time—and a time fixed for its ending, so as to make it a *term* as distinct from a freehold.

Leases of lands in Middlesex and Yorkshire, with certain exceptions, require *registration* in the same manner as conveyances of freeholds. Leases for forty years or more in districts where registration is compulsory on sale—except terms created for mortgages—do not pass any legal estate to the transferee until he is registered.

Before entry the lessee has in general no estate but merely an *interesse termini*, or right to the term. But where the lease is made by any conveyance under the St. Uses, the term vests in the lessee at once without entry, and registration under the Land Transfer Acts has the same effect.

Lease by Estoppel.—If A. by deed leases to B. lands in which he has no interest, both A. and B. are during the term *estopped* from denying its validity. If, then, A. at any time during the lease acquire such lands, the lease takes effect out of his estate and becomes a regular estate for a term of years. But if A. had *any* interest in the land, in the land only such

interest passes, and the lease will have no further effect by estoppel.

A tenant for a term of years has a true property in his holding, and has the right to possession against everyone. He may dispose of his interest by *assignment* of the whole, or by granting an *underlease* for a shorter term than his own, unless his lease has contained a covenant not to assign or underlet.

He is, in the absence of agreement, liable for voluntary waste, and in respect of permissive waste is bound to keep the premises wind and water tight. His rights are, however, usually regulated by express covenants, *e.g.*, as to repair, painting, mode of cultivation and use of premises.

Under an agreement to take a lease with "usual" covenants, the lessor cannot insist on more than covenants (a) to pay rent; (b) to pay taxes, except those expressly payable by the lessor; (c) to keep and deliver up in repair; (d) to allow lessor to enter and view repairs. And the lessor is entitled to have a condition for re-entry on non-payment of rent, but not on breach of other covenants.

The lessee's covenant to pay rent and his other covenants are binding on him for the whole term, in spite of any assignment; hence, on a sale by him, the purchaser is bound to covenant to indemnify him against any breach of covenant. Even without such a covenant an assignee must indemnify the lessee for any breach of covenant while he remains entitled to possession, but on assignment his liability passes to his assignee.

Any assignee is liable to the landlord for the rent, and for breach of *covenants running with the land* while the term is vested in him. Such covenants are (1) covenants relating to the premises let; (2) covenants to do any act on the premises, provided the lessee covenanted for himself and his assigns. But *not* covenants to do any act on premises not included in the lease. So also the benefit of covenants relating to the land entered into by the lessor will pass to the assignee by virtue of his *privity of estate* with the lessor. This right was confirmed by 32 Hen. VIII. c. 34, which also enabled the

assignee of a *reversion* to take advantage of conditions of re-entry in a lease. And by the C. A. 1881—in leases after 1881—the rent and the benefit of the lessee's covenants having reference to the subject-matter of the lease are annexed to, and the obligations of the lessor's covenants are imposed on, the immediate reversionary estate, and may be apportioned in case of severance.

Re-entry on breach of covenant, *other than the covenant to pay rent* (p. 64), is now governed by the C. A. 1881. By this Act a right of re-entry or forfeiture is not enforceable unless the lessor has served on the lessee a notice specifying the breach, and requiring it to be remedied and compensation made, and the lessee has failed to comply with the notice. And where a lessor is proceeding to enforce his right of re-entry, *but not after he has actually recovered*, the Ct. may grant relief against such forfeiture.

These provisions did not extend to (1) covenants against assigning, underletting, &c., nor (2) to certain covenants in mining leases, nor (3) to conditions for forfeiture on the lessee's bankruptcy, or the taking in execution of his interest. But as to (3), it is provided by the C. A. 1892, that forfeiture shall not take place within one year from the bankruptcy, &c., and not at all if the lessee's interest is sold within the year.

A right of entry was at C. L. indivisible, and was destroyed by the lessor giving the lessee any licence to commit any breach of covenant, or by his waiver of the right after breach. But by Lord St. Leonards' Act, 1859, it was provided that a licence should extend only to the particular act licensed, and by an amending Act of 1860 that a waiver should apply to the particular breach waived.

For the same reason, the grantee of part of a reversion could not at C. L. take advantage of a condition of re-entry. A remedy was provided for this by Ld. St. Leonards' Act, as far as concerns covenants for payment of rent; and now the C. A. 1881, provides that every right of re-entry and condition contained in leases made after 1881 shall, on severance of the reversionary estate, become annexed to the several parts thereof.

By the St. Frauds, writing was required to *assign* a lease; now, by the R. P. A. 1845, it must be by deed. Assignments of leases require registration to the same extent as the leases themselves (p. 95).

Leaseholds, being chattels, could always be disposed of by will, and devolved on the executors or administrators like other personalty.

By the W. A. 1837, a general devise of the *land* of the testator, and any general devise which would describe leasehold if the testator had no freehold which could be described by it, will include leaseholds, unless a contrary intention appears by the will.

Leaseholds could always be taken in execution for debt in the lifetime of the debtor, or made liable after his death, like his other chattels. The effect of a judgment as a *charge* on leaseholds is now governed by the L. C. A. 1900. On bankruptcy they vest in the trustee, subject to his right of disclaimer (p. 82).

An underlease is any grant for less than the whole term. Any assurance of the whole is an assignment.

An underlessee is tenant to his immediate, and not the original, lessor. Between the latter and an underlessee no privity exists, either of contract or estate, since the estate of the underlessee is a new and distinct term. He cannot, therefore, sue the underlessee for any breach of the covenants of the original lease.

Goods of an under-tenant—unless he is a mere lodger—are liable to distress for the rent due under the head lease; he may also be ejected by the superior landlord if the head lease be determined by re-entry. But he is entitled to the same relief against forfeiture for non-payment of rent as the lessee; and by the C. A. 1882, where a lessor is *proceeding* to enforce any right of re-entry or forfeiture, the Ct. may, on the application of the underlessee, make an order vesting in him, on such conditions as it may think fit, the property comprised in the lease for the whole or any less term. Under this Act an under-tenant may be relieved where the

lessee would be without remedy under the Act of 1881—*e.g.*, on breach of a covenant not to assign.

Underleases and assignments thereof require registration in Middlesex and Yorkshire to the same extent as leases and assignments of leases from a freeholder, and are governed in the same way by the L. T. A. 1897.

A husband might at C. L. dispose of his wife's term of years during the coverture, and if he survived he took it *jure mariti*. But if he died first it survived to her, unaffected by his will. He had similar rights over the wife's *equitable* interest in a term of years, subject to her *equity to a settlement*. But if there were a trust for her separate use she could dispose of her interest as a *feme sole* as she can now, if it is her separate property, under the M. W. P. A. 1882. If, however, she makes no disposition thereof in her life or by her will, her husband becomes entitled thereto at her death *jure mariti*, without taking out letters of administration.

Renewable Leases.—Sometimes fresh leases are granted before the expiration of existing leases; in others, there is a covenant to renew the lease on payment of a fine, and such a covenant may confer a perpetual right of renewal. The acceptance of a new lease operates as a surrender of the old; and if a new lease is granted to another person by the consent of the tenant who gives up possession, this is an implied surrender. If a trustee obtains a renewal of a lease he is a constructive trustee thereof for the *c. q. t.*

Improvements.—Before 1876 the tenant of an agricultural holding had no right to compensation for improvements, except by express agreement or under a local custom. Now, by the Agricultural Holdings Acts, 1883 and 1900, a tenant of a holding to which these Acts apply may obtain compensation (1) for the erection of buildings and specified permanent improvements if executed with the previous consent of the landlord or his tenant; (2) for drainage if he has given the landlord notice of his intention to execute such improvements; (3) for manuring and similar improvements though the landlord's consent has not been obtained. In this case fair compensation, payable under an agreement in

writing, may be substituted for compensation under the Acts. Apart from this, an agreement depriving the tenant of his rights under the Act is void. 4

A landlord paying compensation may obtain from the Board of Agriculture an order charging the land with repayment of the amount with interest. Such a charge to be valid against a purchaser must be registered in the Land Registry Office.

Long Terms of Years.—In settlements, long terms are often created to secure payment of money (*e.g.*, of portions for younger children) without affecting the seisin of the freehold. The term—say of 1,000 years—is limited, by way of use, to trustees on trust out of the rents and profits, or by sale or mortgage thereof to raise the money required, and subject thereto on trust to permit the owners of the land to receive the rents and profits.

Usually in such case there is a **proviso for cesser**, *i.e.*, that if the money is duly paid the term shall become extinguished.

It might also be extinguished by being surrendered by the trustees to any owner of the freehold. The smallest freehold is larger than the longest term; if, therefore, even a life tenant of the land became possessed of the term without any vested estate intervening, it would merge in his life estate, which would become no larger thereby. At law, though not in equity, merger would occur in spite of any trusts, *e.g.*, if the trustees purchased the freehold; but since the Judicature Act, 1873, no merger occurs in law where there was none in equity.

If the term was not extinguished by merger, or under a proviso for cesser, it might be kept on foot for the benefit of the owner for the time being. A purchaser of the freehold might have the term assigned to a trustee for him and his heirs and assigns, or, as it was said, *in trust to attend the inheritance*. He would thus gain protection against any incumbrance which, unknown to him, the vendor might have created upon the land since the term, and which could only take effect subject to the term. If, however, the purchaser at the time of purchase knew of the incumbrance, he could

not defeat it in this way unless it was merely a right of dower which had attached to the lands. If a term were neither surrendered nor assigned to a trustee to attend the inheritance, it was still considered to be attendant on the inheritance for the benefit of all persons entitled to the inheritance.

But by the **Satisfied Terms Act, 1845**, it was provided (a) that every existing satisfied term attendant on any inheritance should, on December 31st, 1845, absolutely cease, but if attendant by express declaration it should continue to afford the same protection as if it still subsisted; (b) that every term becoming satisfied after that date should, on becoming attendant on an inheritance, immediately cease and determine.

By the **C. A. 1881**, where land is held for an unexpired residue of not less than 200 years of a term originally not less than 300 years, which was not liable to be determined by re-entry on breach of condition, not subject to any right of redemption in favour of the reversioner, or to any rent of money value, and not created out of a term itself incapable of enlargement, it may be enlarged into a fee simple by a declaration by deed made by (a) any person beneficially entitled thereto; (b) any person who is trustee thereof, or who has it vested in him on trust for sale; (c) any person in whom it is vested as personal representative.

CHAPTER II.

OF A MORTGAGE OF LAND.

A MORTGAGE of land is the transfer of the property therein as security for the payment of money. In early law a pledge of land was effected by a conveyance to the creditor to hold until the debt was paid, either applying the profits and rents to payment thereof or taking them in lieu of interest, the latter being termed a *mortuum vadium* (*mortgage*).

Later, the land was given in pledge, with a proviso that on non-payment it should remain to the creditor in fee. Then it became the custom to enfeoff the creditor in the first instance with a proviso for re-entry in payment. A mortgage therefore became a conveyance of land for an estate to be determined on repayment by a certain day. And at law if it was not so paid, the estate of the person to whom it was conveyed became absolute. But in equity, a mortgagor on paying all that was due was allowed to redeem his estate after the legal day of payment. This principle of the mortgagor's *equity of redemption* was completely settled *sub* Charles II., when it was laid down that a conveyance made as a security for money is always in equity a mortgage and redeemable in spite of any agreement to the contrary.

Further, it was held that in equity the right of the mortgagee was to the money secured, that he held the land only as a security, and had merely a charge on it, though at law he were absolute tenant in fee. Though at law the estate of a mortgagee in fee went to his heir or devisee, in equity it was considered personalty, and he was merely a trustee of it for the executor or administrator. Conversely, the mortgagor was in equity considered as the owner of the

land subject to the mortgage, and his equity of redemption was treated as an equitable estate in the land. At the present day, on mortgage to secure a loan, the land is conveyed to the creditor with a proviso for reconveyance on payment of principal and interest at a specified date. There is also a personal covenant by the mortgagor for payment. Until the date specified the mortgagor has a legal right to redeem; afterwards he has merely an equity of redemption.

The mortgagee acquires the fee simple and seisin and an immediate right of entry, the mortgagor remaining in possession being strictly a tenant by sufferance. And the Cts. of Equity would never restrain a mortgagee from taking possession. But if he does take possession, he is liable in equity to account strictly for the rents and profits and his management; hence possession is taken only as a last resource.

The mortgagor while in possession may take the rents and profits without any liability to account for them; he retains his right of free enjoyment, and is not liable for waste unless it is wanton destruction or impairs the value of the security. His equity of redemption is real estate in equity, and is alienable and devolves like other equitable estates.

Formerly, on death of a mortgagor of land the debt was primarily payable out of his personalty. Now, under Locke King's Act, 1854, and amending Acts, the heir or devisee is not entitled to have the debt discharged out of the personalty, but the land itself is subject to it, unless the mortgagor by will, deed, or other document signifies a contrary intention. Nothing, however, prevents the mortgagee from obtaining payment out of the personalty of the mortgagor.

Power of Leasing.—The mortgagor's equity of redemption being an estate in equity only, does not in general enable him to create any legal interest in the land, except under an express power given to him by the mortgagor, and operating under the St. Uses. But under the C. A. 1881, a mortgagee in possession has power to make an agricultural or occupation lease for not more than twenty-one years, and a building lease for not more than ninety-nine years, and

under this statutory power the lessee gets a term in the land valid at law. These statutory powers may be enlarged or excluded by the mortgage deed.

Actions.—At C. L. the mortgagor could bring no action to recover possession of the lands. But by the Judicature Act, 1873, a mortgagor entitled to possession or to the receipt of rents and profits may, with certain exceptions, sue in his own name for the recovery thereof, or to prevent or recover damages for any wrong relative thereto, provided that the mortgagee has given no notice of his intention to take possession or enter into receipt of the rents and profits.

The mortgagee's remedies are: (1) In case of non-payment to sue the mortgagor personally on his covenant to repay. (2) To *foreclose*, i.e., take proceedings in the Ch. D. for an account of principal and interest due, and that the mortgagor may be directed to pay with costs on a certain day, and in default may be foreclosed his equity of redemption. If payment is not made, an order for foreclosure follows, which vests in the mortgagee the full beneficial title in the land. The Court may now in foreclosure proceedings order sale instead of foreclosure. (3) To take possession. (4) To sell under his power of sale, if he have one. On sale the surplus, after payment of debt, interest and costs, must be paid to the mortgagor.

By the C. A. 1881, every mortgagee under a mortgage made *by deed* after 1881 has a power of sale. But he may not exercise it unless (1) notice requiring payment has been served on the mortgagor, and default has been made in payment of the mortgage money or part thereof for three months after service; or (2) some interest is two months in arrear; or (3) there has been a breach by the mortgagor of some provision contained in the mortgage deed or in the Act other than for payment of the debt or interest.

These provisions may be varied, extended, or excluded by the mortgage deed. By the same Act a mortgagee under a mortgage made *by deed* after 1881 may, when his statutory power of sale becomes exerciseable, appoint a receiver of the income, and may under certain conditions insure against fire

and cut and sell timber. If in possession, he may also grant the same leases as a mortgagor in possession, and they will be good against the mortgagor or prior incumbrances.

Mortgagor's Remedies.—If he wish to pay off the mortgage after the day fixed he must, as a rule, give the mortgagee six months' notice, or pay six months' interest. He can then require a reconveyance, and to enforce this or his right of redemption he may take proceedings for redemption in the Ch. D. In such proceedings the Ct. may order a sale.

Lapse of Time.—(a) If a mortgagee has obtained possession the mortgagor can only redeem within twelve years thereafter, or twelve years after any written acknowledgment of his title or right to redeem has been given signed by the mortgagee.

(b) If the mortgagor remain in possession without paying principal or interest, or without giving any written and signed acknowledgment of the title or right of the mortgagee, the latter will similarly be barred from taking possession, or foreclosing, or suing for his money, at the end of twelve years from the time when his right of entry or right of action accrued.

Copyholds.—The mortgage of copyholds is effected by a deed of covenant to surrender, followed by a surrender to the use of the mortgagee, subject to a condition that on payment on a fixed day the surrender shall be void. If not so paid the mortgagor has at law an absolute right to be admitted to the customary estate, conveyed to him subject to the mortgagor's equity of redemption. If the mortgagee is admitted he must, on payment, surrender back to the use of the mortgagor. If he has not been admitted, a memorandum of his acknowledgment of satisfaction is inserted in the Ct. rolls.

By the Copyhold Act, 1894, the provisions of the C. A. 1881, as to the devolution of the estate of a sole mortgagee (*ante*, p. 43) do not apply to copyhold or customary freehold where the mortgagee has been admitted.

Leaseholds may be mortgaged (1) by assignment, subject

to proviso for re-assignment; (2) by sub-demise of a slightly shorter term, with a proviso for surrender, and a declaration that the mortgagor shall hold his reversion on trust for the mortgagee, subject to his equity of redemption. In the first case the mortgagee *is*, in the second he *is not*, liable to the original landlord for payment of the rent and performance of the covenants of the original lease.

Equitable Mortgages arise (a) on the mortgage of an equity of redemption or other equitable estate; (b) where a legal owner of lands pledges them by writing without deed, or deposits the title deeds with the mortgagee. When lands are sold, but the purchase money is not paid, the *vendor* has a *lien* in equity on the lands for the amount unpaid, with interest at 4 per cent. The lien is not destroyed by taking a bond or note, but it is by taking a mortgage or independent security.

A stipulation in a mortgage that on failure of punctual payment the rate of interest shall be increased is void, but a stipulation to diminish the interest on punctual payment is good.

Where money is advanced by several persons, it is in equity presumed to have been lent in equal shares, and on the death of one his share will pass to his executor or administrator. In a mortgage to trustees the trust is usually kept off the face of the mortgage deed, and to avoid the above rule it was usual to declare that the money was advanced by them on a joint account, and that on decease of one the receipt of the survivors should be a discharge. By the Conveyancing Act, 1881, provisions having the effect of the joint account clause are in the absence of contrary agreement incorporated in every mortgage made after 1881, in which the money is expressed to be advanced by several persons on a joint account, or jointly and not in shares.

Subject to the L. C. A. 1900, judgment debts are a charge on the interest of the mortgagee.

Transfer of Mortgages are effected by assignment of the mortgage debt and interest to the new mortgagee, and a conveyance of the lands to him subject to the equity of redemption. Under the C. A. 1881, a mortgagor may compel

a mortgagee who has not taken possession to assign the debt and convey the property to any third person.

An equity of redemption may itself be mortgaged, but if the second is made without disclosing the first, the mortgagor by 4 & 5 W. & M. c. 16, will lose his equity of redemption. A mortgagee who has obtained the *legal* estate has priority over all subsequent charges except those created by his authority and any previous equitable charge of which he had ~~no~~ notice.

If a mortgagee having the legal estate makes a further advance without notice of any intermediate mortgage, he has a first charge for the whole of his advances. And a third or subsequent mortgagee who had no notice when he took his security of any but the first mortgage, can, if he obtains a transfer of the legal estate of the first mortgagee, tack this to his own and squeeze out any intermediate mortgage.

As between themselves equitable charges as a rule, and in the absence of fraud or negligence, rank in the order of their creation.

Mortgages of lands in Middlesex or Yorkshire require registration like purchase deeds. Under the Middlesex Registry Act mortgages have priority according to the date of registration, except that a mortgagee who took the legal estate without notice and has registered has priority over previously registered equitable charges. Mere registration does not in Middlesex prevent tacking if a third mortgagee had not in fact notice of the intermediate mortgages. The Middlesex Act does not apply to equitable mortgage by deposit of title deeds without any writing, nor to a vendor's lien.

Under the Yorkshire Registry Act, 1884, registration gives absolute priority, except in case of fraud, in spite of actual or constructive notice, and tacking is impossible except as against interests created before the Act. Vendor's liens or charges created by deposit of title deeds have no effect or priority against registered assurances for valuable consideration unless registered under the Act.

Consolidation.—If A. mortgaged Blackacre to X. and then

Whiteacre to X. for another debt, he could not redeem one without the other, and the mortgagee might enforce payment of both debts out of either property. The same applied if Blackacre was mortgaged to X., then Whiteacre to Y., and subsequently both mortgages became vested in Z., unless the equity of redemption of one property was assigned by the mortgagor before both properties vested in Z.

By the C. A. 1881, consolidation is not allowed where the mortgages, or one of them, is made after 1881, unless a stipulation to that effect is expressed in the mortgage deeds *or one of them*.

PART V.

OF TITLE.

IN English law all title to land is founded on possession. It is *prima facie* evidence of seisin, and a person in possession has a good title against all except those who can prove a better. And long possession may even bar the rights of the true owners and give the possessor a good title against all the world.

Actions for the recovery of land are governed by the **Real Property Limitation Act, 1874**. No entry may be made or action brought by any person to recover land except within twelve years after the right to do so accrued to him or some one through whom he claims, or within twelve years after a written acknowledgment of his title has been given to him or his agent signed by the person in possession. A person under disability when his rights first accrued has a further extension of six years, but cannot claim after thirty years in all have expired.

The right to future estates accrues when they become estates in possession, but if the owner of the particular estate was not in possession when his estate determined, the owner of the future estate has either twelve years after the right of entry or action accrued to the particular tenant, or six years after it became vested in possession.

If the right of a tenant in tail is barred, so also is the estate of anyone whom the tenant in tail might have barred. If a tenant in tail die while time is running against him, no person claiming under such estate has more time than the tenant in tail would have had if he survived.

Equitable estates must, as a rule, be claimed within the

same time as legal. Where, however, land is vested in a trustee on any express trust, the right of the *cestui que trust* is deemed to have accrued when the land is conveyed to a purchaser for valuable consideration, and then only against him. But the Statutes of Limitations apply to actions by a *c. q. t.* against a trustee except where the claim is to recover the trust property, or the proceeds thereof, which have been retained or converted by the trustee, or is in respect of any fraudulent breach of trust.

Rents and tithes in the hands of laymen are subject to the same rules as land.

For advowsons the period of limitations is three successive incumbencies, or one hundred years if they exceed that time, or sixty years if they do not amount to so much.

Money secured by a mortgage or otherwise charged in land, and legacies, can be recovered only within twelve years after the right accrued, or the last written and signed acknowledgment of the right thereto.

By 9 Geo. III. c. 16, all Crown rights are barred after sixty years.

Prescription.—The title to purely incorporeal hereditaments depends upon *grant*, or on *prescription* from immemorial user (*i.e.*, user from the beginning of the reign of Rich. I.), by which a grant is presumed. Immemorial user was presumed on proof of twenty years' enjoyment, but might be rebutted by evidence to the contrary. This rule still governs all cases not within the **Prescription Act, 1832**.

By this (a) no right of common or *profit à prendre*, if enjoyed without interruption for thirty years before action, can be defeated merely by showing it was first enjoyed prior thereto, and if enjoyed for sixty years the right is indefeasible, unless it has been enjoyed under an agreement in writing; (b) for rights of way and other easements, watercourses and the use of water, the terms are twenty and forty years; (c) where light is enjoyed with any building for twenty years without interruption, the right is indefeasible unless enjoyed under agreement in writing. Nothing is an interruption unless submitted to for one year after notice; the time during which

a person is under incapacity, or during which any action is pending, is excluded from the above periods, save where the claim is declared indefeasible. The Crown is barred by these provisions except in case of light.

Rights gained by prescription may be lost by abandonment, of which non user for twenty years is generally sufficient evidence.

In former times a deed of feoffment usually contained a clause of warranty (p. 6), and the word *give* had the effect of an implied warranty, which was, however, more limited in extent than the express warranty. Such clauses of warranty are now obsolete. In modern times every vendor of land is bound to show a good title, *i.e.*, evidence of ownership by himself and his ancestor for a number of years back. A vendor must therefore at his own expense furnish to the purchaser an *abstract of title*, verified by the production of the original documents, or their probate and office copies, showing the material parts of every disposition of the property during the time for which title has to be shown, and a statement of every birth, death, &c. or other event affecting its devolution.

The purchaser must, in the absence of contrary agreement, bear the expense of producing all documents of title and other evidence not in the vendor's possession, and of the examination of title deeds by his solicitor.

In the absence of stipulation to the contrary, recitals and statements contained in deeds or instruments twenty years are, unless proved inaccurate, sufficient evidence of the facts therein stated.

Apart from special contract, the following title must be shown :—(a) To freehold or copyhold, forty years. (b) To leasehold, the original lease and the title for forty years before the date of the contract. But *not* the title to the reversion, whether freehold or leasehold. (c) To an advowson, one hundred years. (d) To tithes, the original grant and the title for forty years before the contract.

The abstract should commence with an instrument which forms a good *root of title*, *i.e.*, one which is beyond doubt

and does not require the support of outside evidence, *e.g.*, a conveyance on sale, but not a will, as in that case evidence must be given of the testator's title.

A vendor need not necessarily show he has the whole estate if he has an equitable interest which will enable him to procure conveyance. If any other persons are interested in the land, this must be disclosed by the abstract, and their concurrence must be obtained. Thus, if lands are mortgaged, the mortgagee must be paid off out of the purchase-money and join in conveying the legal estate. The expense of such concurrences must be paid by the vendor. By the C. A. 1881, on sale of land subject to any mortgage or charge, the Ct. may allow payment into Ct. of a sum sufficient to provide for such charge with future costs, and may then, without the consent of the encumbrancer, declare the land free from the charge, and make any order for conveyance or vesting order.

On mortgage of land, title is investigated in the same way as on sale, the mortgagee requiring a good marketable sale, which will enable him, if necessary, to sell again without difficulty.

A contract for sale may be specifically enforced by either the vendor or purchaser, but not a contract to lend or borrow money.

On a contract to *grant* a lease the lessee has no right to call for the title to the freehold, but on a contract for an underlease the lessee can call for the lease and the forty years' title immediately preceding, but not the title to any leasehold reversion. On the completion of a sale or mortgage the purchaser or mortgagee is entitled to all documents of title relating exclusively to the property. This, except where registration is compulsory, is his only protection. Even this is inadequate in some cases: thus, it does not protect him if a previous rent-charge has been granted out of the lands, the grantee in such a case having no right to the deeds.

In case of reversions there is not even this protection, as the reversioner has no deeds that he can give. On a sale of a reversion the onus was formerly on a purchaser to show

that he gave the fair price ; but by the Sales of Reversions Act, 1868, no purchase can be set aside on mere ground of undervalue if made without fraud.

By the C. A. 1881, a mortgagor, while his right to redeem lasts, is entitled to inspect and make copies of documents of title in possession of the mortgagee.

The vendor is entitled to retain any documents which relate also to other property retained by him. Where title deeds cannot be delivered to a purchaser, he is entitled to have a written *acknowledgment* of his right to their production, and to copies thereof.

By the C. A. 1881, this imposes on every possessor of the documents, *while they are in his control*, the obligation to produce them whenever required for proving the title of the purchaser. By the same section, if the person retaining deeds gives a written *undertaking* for safe custody, that imposes on him an obligation, while he has possession, to keep them safe and undefaced, unless prevented by inevitable accident.

In Middlesex and Yorkshire search is made in the registries for any registered assurances affecting the lands. The principal searches necessary in all counties are those for disentailing deeds, for deeds acknowledged by married women before 1883, writs and orders affecting land and *lites pendentes*, land charges, life annuities, bankruptcies, insolvencies and deeds of arrangement. In case of copyhold the Ct. rolls are always searched.

After all searches are made the transaction is completed by conveyance and payment of the consideration money. By the C. A. 1881, payment may be made to the vendor's solicitor if he produces a deed having in the body thereof, or indorsed thereon, a receipt, the deed being executed or the indorsed receipt being signed by the vendor.

By the Trustee Act, 1893, the receipt of a trustee for money and other personal property payable to him under a trust is a sufficient discharge, and the person so paying, &c. is not bound to see that the money, &c. is duly applied pursuant to the trust.

Covenants for Title.—The old warranty has now been superseded by covenants for title entered into by the vendor, for breach of which the remedy is an action for damages. The ordinary covenants are: 1. For right to convey; 2. For quiet enjoyment; 3. For freedom from incumbrance; 4. For further assurance.

A vendor is entitled to limit his responsibility to the acts of those who have been in possession since the last sale. A mortgagor always covenants absolutely. Trustees covenant merely that they themselves have done no act to encumber the premises.

On conveyance of freeholds the covenants for title are included in the deed of conveyance; in case of copyholds they are contained in a deed of covenant to surrender.

By the C. A. 1881, the following covenants are implied in conveyances made after 1881 :—

1. In a conveyance for valuable consideration except a mortgage, the four usual covenants by a person who conveys and is expressed to convey as *beneficial owner* limited to his own acts and those through whom he derives title otherwise than as purchaser for value.

2. In a conveyance of leasehold as above, a further covenant (also limited) that the lease is valid, the rent paid, and the covenants performed.

3. On a mortgage by a person who conveys, &c. absolute covenants for title.

4. On mortgage of leasehold an additional covenant (absolute) for validity of the lease, and for indemnity against the rent, and covenants of the lease, so long as any money remains in the security of the conveyance.

5. On settlement a covenant for further assurance by a person who conveys, &c. as *settlor*, limited to his acts and those of persons claiming under him subsequent to the conveyance.

6. On any conveyance a covenant (limited to his own acts only) against incumbrances by everyone who conveys as trustee, mortgagee, personal representative of a deceased person, &c.

Formerly, covenants for title were implied in some cases, *e.g.*, from the words "give" or "grant." Now, by the R. P. A. 1845, such words imply no covenant except where expressly provided by statute.

On a lease for years the word "demise," or other similar words, implies a covenant for quiet enjoyment so long as the lessor, or anyone claiming through him, has any estate in the land. Usually, however, the lease contains an express covenant by the lessor limited to his own acts only.

PART VI.

OF THE PRESENT FORM OF A CONVEYANCE.

Form.

Date.	THIS INDENTURE, made the first day of January,
Parties.	1882, BETWEEN A. B., of Cheapside, in the City of London, Esquire, of the one part, and C. D., of Lincoln's Inn, in the County of Middlesex, Esquire, of the other part.
Testatum.	WITNESSETH that in consideration of the sum of one
Consideration.	thousand pounds now paid by the said C. D. to the said
Nature of transaction.	A. B. for the purchase of the unincumbered fee simple in possession of the hereditaments hereinafter described (the receipt of which sum the said A. B. doth hereby acknowledge), the said A. B. doth hereby grant <i>as beneficial owner</i> unto the said C. D.
Receipt.	
Operative words.	
Parcels.	ALL THAT messuage or tenement [usual description of the property].
Habendum.	TO HAVE AND TO HOLD the same premises unto and to the USE of the said C. D. in fee simple.
	IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

The chief respects in which the foregoing differs from a conveyance on sale made before 1882 are (1) The "general words" which were formerly inserted after the parcels for the purpose of passing advantages in the nature of easements are no longer necessary (p. 80). (2) After the "general words" there was before 1882, where the entire interest of the conveying party was

transferred, an *estate clause* for the purpose of passing any estate or interest vested in him and distinct from the estate, &c. which he purported to convey. Now by the C. A. 1881, every conveyance, unless a contrary intention is expressed, passes all the interest and estate of the person conveying; hence such a clause is unnecessary. (3) Formerly the covenants for title which are now implied by the use of proper statutory words (p. 114) were inserted at length. (4) A receipt for the consideration was formerly endorsed upon the deed; now, by the C. A. 1881, a receipt in the body of a deed is a sufficient discharge.

PART VII.

**REGISTRATION UNDER THE LAND
TRANSFER ACTS.**

REGISTRATION under these Acts is voluntary except in the county of London, where it is, with certain exceptions, of which the chief are leases with less than forty years to run, or two lives to fall in, and incorporeal hereditaments, compulsory on sale.

What may be registered.—Freehold but not copyhold. Leasehold if (a) created mediately or immediately out of freehold; (b) held for a life or lives, or term of years, of which more than twenty-one are unexpired; (c) *not* created for mortgage purposes.

Who may register.—(1) A person who has contracted to buy for his own benefit provided the vendor consents. (2) A person entitled for his own benefit. (3) A person who has a power of disposition for his own benefit, &c. (4) A person holding the lands on trust for or with a power of sale—with the consent of any other person whose consent is necessary for the exercise of the power or trust. (5) Any two or more persons entitled for their own benefit, whether concurrently or successively.

Registration may be with absolute, possessory, or qualified title.

An absolute title is registered only if the registrar is satisfied that the title is without defect. The title is fully investigated, and the application is advertised so as to give an opportunity for objections to be made. The title cannot be registered until any objection is withdrawn or disposed of.

Incumbrances to which the fee simple is subject must be

entered on the register, and a statutory declaration must be made that they have all been disclosed. All documents of title must be produced, and stamped or marked, so that the registration cannot be concealed.

On application for registration of an absolute title, if the title can be established only for a limited time, or subject to reservations, it may be registered as a qualified title, which is the same as an absolute title, save that it is subject to any such right, title, or interest which is excepted from the registration.

A possessory title, which is all that need be registered even where registration is necessary, is registered without any investigation of title. The applicant need only produce either (1) a deed or other document conferring a title which admits of registration; or (2) a statutory declaration that he is in possession with in case (1) if the document is a document of record, and in case (2) always the latest document of title in his possession.

Leaseholds.—The same rules in general apply. The lease or an abstract thereof or other evidence of its contents must be produced; and if an absolute title is required, the title to the freehold and any intermediate leasehold must also be approved.

On entry of a person's name, a land certificate is prepared stating the title registered, and is either delivered to him or kept in the registry.

The effect of first registration of a person with an absolute title (a) in case of freeholds confers on him an absolute estate in fee simple, subject to any incumbrances, and unless the contrary is expressed, to any liabilities declared by the Act not to be incumbrances, *e.g.*, easements and rights to minerals, and subject to any equities or trusts; and (b) in the case of leaseholds, the possession of the land for all the leasehold estate described, subject also to the covenants in the lease.

Registration with a qualified title has the same effect, save that excepted interests are not affected. Registration with a possessory title does not affect any adverse estate or interest subsisting or capable of arising at the date of registration.

Settled land may be registered either by the life tenant or the trustees of the settlement.

Subject to the right of the registered proprietor to deal with the land, the rights of the persons entitled under the settlement are unaffected by the registration. No trusts are entered on the register, but the rights of any *c. q. t.* may be protected by the entry of *restrictions* and *inhibitions*.

Transfers of registered land by a *registered* owner must be made in prescribed form, and until entry in the register the purchaser gets merely an equitable estate. Subject to the rights of the registered proprietor, any person who has any interest or right in registered property may create estates and interests therein as if it were not registered, and any person entitled to such unregistered interests may protect them against any act of the registered proprietor by entering *cautions* and *inhibitions*.

Where the title is *absolute*, a registered transfer for valuable consideration transfers the whole interest of the owner subject to any incumbrances, and to any interests declared not to be incumbrances, and, in case of leaseholds, to all covenants and obligations. Where the title is *qualified*, such a transfer does not affect any excepted rights, and where it is *possessory* any adverse rights subsisting or capable, &c.

If the transfer is voluntary it is also subject to any unregistered interests created by the registered proprietor.

On every entry of a disposition by the registered proprietor, the land certificate must be endorsed accordingly.

Any transfer made for valuable consideration extinguishes all estates, &c. created under unregistered dispositions by the registered proprietor, save such as are declared not to be incumbrances.

Mortgages are created by **registered charges**. On such charges, in the absence of any entry to the contrary, covenants to pay the principal and interest are required, and in case of leaseholds to pay the rent and perform the conditions thereof, and indemnify the mortgagee therefrom. Subject to any agreement, the mortgagee only gets the certificate of charge and not the land certificate. Subject to any entry to

the contrary, the chargee has (1) powers of entry subject to the rights of prior incumbrancers and the liabilities of a mortgagee in possession; (2) power of foreclosure; (3) power of sale in the absence of stipulation to the contrary. On obtaining an order for foreclosure the chargee is entitled to be registered as the proprietor, and then obtains the legal estate.

Subject to any entry to the contrary, registered charges rank according to the order in which they are entered.

Transfers of a registered charge are made by registered transfers in a prescribed form, and are not complete until entry, the certificate of charge being delivered to the transferee.

Subcharges may be made in the same way as charges, and a similar certificate issued.

The cessation of a registered charge must be notified on the register at the requisition of the registered proprietor thereof, or on due proof of its satisfaction, and thereupon the charge ceases.

A registered proprietor of land or a charge may, subject to any registered charges, create a charge thereon by deposit of the land certificate, and such charge will have the effect of an equitable mortgage.

A person entitled to an incumbrance prior to the first registration may be registered as the proprietor of such incumbrance, and a certificate of incumbrance is issued to him.

On death of a sole proprietor, his personal representatives are entitled to be registered, or with their assent a devisee or legatee, or upon a transfer from them the heir or next of kin. On the death of a life tenant, the trustees of the settlement must apply for the registration of his successor.

On bankruptcy the official receiver or trustee, or his transferee, may be registered.

A purchaser of registered land can require no evidence of title, except (a) such as may be obtained from an inspection of the register, or a certified copy of or extract from the register; (b) a statutory declaration as to the existence or not of matters declared not to be incumbrances; (c) in case

of an absolute title, evidence of the title to, or the discharge of, any incumbrances entered on the register as subsisting at the first registration; (d) in case of a qualified title, the same and such evidence as to excepted rights or interests as he could require if the land were unregistered; (e) in case of a possessory title, such evidence of the title subsisting at the first registration as he could require if the land were unregistered.

Where the vendor of registered land is not himself registered, he must at the purchaser's request either procure his own registration or a transfer from the registered proprietor to the purchaser.

In the absence of special stipulation a vendor registered with an absolute title is not required to enter into any covenants for title, and a vendor with possessory or qualified title is only required to covenant against estates and interests excluded from registration.

On application to register land with an absolute title any liability to succession or estate duty must be registered. Unless so noted, it does not affect a *bonâ fide* purchaser for full consideration.

Instruments or applications delivered for registration take effect from the time of delivery. A priority notice may be lodged reserving priority for a specified instrument or subsequent application, which, if then delivered, within fourteen days has priority from the date of the notice.

Any person interested in any land or charge may lodge with a registrar a caution, which prevents any registration of any dealings with such land without notice to him. A caution may also be registered against registration of land not yet registered.

An inhibition is an order or entry made upon the application of any person interested, &c., and forbidding, until the occurrence of a specified event or until further order, any further dealings with the registered land or charge.

A restriction is an entry made on the application of a registered proprietor forbidding any transfers or charges unless certain specified conditions are complied with.

The Court may order a rectification of the register. Subject to any estates or rights acquired by registration, any person aggrieved by any entry, omission of entry or default in registration, may apply for rectification. If any error or omission of entry is incapable of rectification, such person is entitled to be indemnified unless the loss has been caused or contributed to by his own fault. Such indemnity may be recovered from the person who has caused, &c. the loss.

A title to registered land cannot be acquired by adverse possession. But any person who, but for this, would have acquired a title under the St. Limitations, may apply for an order to rectify the register by his entry as registered proprietor.

The register consists of (a) The **Property Register**, containing a description of the land, with notes as to easements, conditions, covenants, &c. (b) The **Proprietorship Register**, stating the nature of the title, the name, address and description of the proprietor, and any caution, inhibition and restriction. (c) The **Charges Register**, containing incumbrances and all dealings with registered charges or incumbrances that are capable of registration.

The register is not open to public inspection.

APPENDIX OF QUESTIONS.

For complete answers to these questions, which have all been set, *some of them many times*, in various examinations, reference should be made to Williams' Real Property, and not merely to this Analysis.

1. Explain and illustrate by examples the terms "corporeal," "incorporeal," "tenement," "hereditament," as applied to property. Is "real" property synonymous with "immovable" property, and "personal" with "moveable," respectively? If not, point out the differences.

2. What were the chief incidents attending the relation of lord and vassal in feudal tenures?

3. What are the provisions of the Statute known as Quia Emptores? Explain the consequence of the passing of that Act with reference to the transfer of real property.

4. What difference was there in the method of conveying a fee simple in land and of creating an easement over land before the Statute of Uses? Is there any difference at the present day?

5. What are the principal tenures of real property now existing, and of whom is the property held?

6. What is the effect of a gift by will to a man and "the heirs of his body" of (a) freeholds; (b) copyholds; (c) leaseholds?

7. What are the chief incidents of gavelkind tenure, and where does the tenure chiefly occur?

8. What is the law governing conveyances to trustees for charitable purposes?

9. What Acts have been passed for the protection of creditors so as to avoid fraudulent conveyances of land by debtors? State the effect of the Acts to which you refer.

10. Distinguish between an heir apparent and heir presumptive, and illustrate your answer by an example in each case.

11. A peer and his eldest son, being tenant for life and tenant in remainder, are desirous of resettling the family freehold estates. What is the nature of the first deed to be prepared, who would be parties to it, and how should it be perfected?

12. What is a base fee? By what means can a base fee be converted into a fee simple?

13. Distinguish between the powers of a tenant for life of land according as he holds with or without impeachment of waste.

14. What power has a tenant for life of a freehold estate to cut timber or work mines?

15. Specify the regulations respecting leases generally and building leases particularly contained in the Settled Land Act, 1882.

16. Who are the trustees for the purposes of the Settled Land Acts, and what are their functions?

17. How does the Settled Land Act protect the remainderman against a fraudulent exercise by the tenant for life of the powers vested in him by that Act?

18. What persons can exercise the powers of a tenant for life under the Settled Land Acts?

19. Explain how a title by "special occupancy" arises.

20. What is the difference between a joint tenancy and a tenancy in common? How can a joint tenancy be severed?

21. Land is conveyed to A. and B. in fee simple. A. predeceases B., having left his share by will to C. Who would be entitled to A.'s share, and why?

22. Point out the different means by which a partition of land may be effected. By what persons may such a partition be effected?

23. State shortly the provisions of the Sales of Reversions Act, 1867, and the extent to which the Act affected the jurisdiction of the Chancery Division over sales of such property.

24. What were the provisions of the Statute of Uses? For what object was the Statute passed?

25. Explain the doctrine that there cannot be a use upon a use, and what resulted therefrom.

26. A. was sole trustee of freeholds and copyholds of inheritance for B. A. and B. died intestate in 1906. On whom did their respective estates in the trust property devolve? Would the devolution have been different had A. and B. died in 1896, and if so, how?

27. State the different modes in which new trustees may be appointed.

28. By what form of deed are freeholds held in fee simple now conveyed? Does such a deed operate under the Common Law or by any, and if so what, statute?

29. An executor derives his powers from the will; an administrator from the grant of letters of administration. Explain this rule and show the chief practical consequences which result from it.

30. State shortly the effect of the Land Transfer Act, 1897, as regards—(a) the devolution of a testator's real estate; (b) the powers of executors over their testator's real estate; (c) the granting of probate of a will of real estate where the testator leaves no personal estate.

31. Before the Inheritance Act, 1833, from whom was descent traced to an estate in fee simple? What is meant by the expression "the last purchaser" as used in that Act? Is descent since that Act ever traced from a person other than the last purchaser, and if so, in what cases?

32. Two ladies succeeded to their father's residuary real estate as his co-heiresses-at-law. They were also entitled to the family mansion under their father's will, he having devised it to them as joint tenants. One of the two ladies consults you as to what will become of her property if she dies intestate. How would you advise her?

33. In what ways can an estate in coparcenary be dissolved?

34. In ascertaining the heir of a deceased purchaser what ancestors and their descendants, and in what order, must be exhausted before the purchaser's own mother can inherit?

35. A. has a son B. by his first wife, and two sons, C. and D., and a daughter by his second wife. C. purchases real estate and dies after A., intestate and a bachelor. D. also predeceases C. without leaving any issue. Who will be entitled to C.'s real estate, and why?

36. State the requirements of the Wills Act, 1837, as to the execution and attestation of wills.

37. What provisions were made by the Wills Act, 1837, affecting the competency of an attesting witness to the will, and a beneficial gift or appointment to such witness?

38. In what way can a will be revoked other than by a new will or codicil?

39. What provision is made by the Wills Act, 1837, to prevent lapse in the case of gifts to one of a testator's children?

40. Freeholds are by will devised "to A. in fee simple, but if he dies without issue, then to B." (a) What is the technical description of such a gift? (b) is it valid? and (c) can A. in any event obtain an indefeasible title to the property during his life?

41. A. being the owner in fee of a house devises the same by will to B. without adding the words "and his heirs" or any other equivalent words. What estate does B. take under the devise, and why?

42. A., devisee under a will of real estate in Middlesex, agreed to sell to B. in 1896. State the provisions of the Vendor and Purchaser Act, 1874, for the protection of B.

43. What is Settlement Estate Duty, and when is it payable?

44. A judgment creditor desires to obtain payment of his judgment debt out of lands belonging to the judgment debtor. Explain the process by which this is done.

45. What powers of sale have executors over the freeholds of testators who died (a) before, and (b) since the 1st January, 1898?

46. Who are the persons to exercise powers of management over property of which the owner is an infant?

47. State quite shortly the effect of the Guardianship of Infants Act, 1886.

48. A husband and wife were married in 1880. What are now the rights of the husband during the life of his wife over (1) freeholds; (2) leaseholds belonging to the wife?

49. What are the rights to-day of a husband in the freeholds and leaseholds of his wife on her death intestate?

50. On investigating a title to real estate you find a conveyance dated in 1884, to which one of grantors is a married woman (having been married in 1881 after she had acquired the property). What formalities should have been observed to make the conveyance valid?

51. What is meant by a restraint on anticipation affecting a married woman's property?

52. A married woman is entitled to freehold land in fee simple under the will of her uncle, who died in 1869. How can it be conveyed to a purchaser (a) if she married in 1880; (b) if she married in 1890?

53. What is dower? Show why the subject of dower has not now the importance which it possessed at the commencement of the 19th century.

54. State the rule in Shelley's Case, and illustrate it by example.

55. Real estate is given to A. for life, remainder to B. for life, remainder to the heirs of A. Advise A. whether he can dispose of the property by will or not, and give your reasons.

56. The principle of the common law is that the seisin of the freehold can never be in abeyance. What two rules are the consequence of this principle upon the limitations of contingent remainders?

57. What is an executory interest in land? By what means may it be created, and how may it be disposed of?

58. What is the difference between a "springing use" and a "shifting use"? and give an example of each.

59. Explain and illustrate the nature of the distinction between general and special powers of appointment.

60. A. is anxious to settle his freehold land so as to make it remain in his family for ever. Explain how and to what extent this can be done, and in what ways his intentions are likely to be defeated.

61. Land is granted to A., a bachelor, for life, and after his death to his first son who attains the age of twenty-four years. A. dies and leaves a son aged twenty. Discuss the nature and effect of this limitation, particularly having regard to the Act of 1877.

62. State the four periods which the Thellusson Act substituted for the pre-existing limits to accumulation, and explain in what way the law on this subject has again been recently restricted.

63. What are *prima facie* the rights of the lord of the manor in (a) the waste lands of the manor, (b) the lands held by his copyhold tenants?

64. By a will which you are instructed to draw a daughter is to be entitled to receive out of certain land, or out of the income thereof, an annual sum of money. What powers will be vested in the daughter for the recovery of the money if no special provisions are contained in the will?

65. The owner of a copyhold estate desires to create a tenancy in tail in his copyhold, and accordingly he limits it to his son and "the heirs of his body." What is the effect of this limitation, and why?

66. The owner of copyhold property dies intestate and without heirs. What becomes of the copyhold property? May it be dealt with again as copyhold property, and if so by whom and subject to what limitations?

67. What are the respective rights of the surrenderor and surrenderee of copyhold property, between the time of surrender and admittance?

68. Why can the Statute of Uses have no application to the limitations of copyhold property?

69. How may a tenancy from year to year arise by construction of law?

70. In the absence of any provision as to notice, what length of notice is required to determine the tenancies created as follows: (1) From year to year; (2) for one year, and so on from year to year; (3) for a year? In your answer have regard to the provisions of the Agricultural Holdings Act, 1883.

71. In what cases is a deed necessary for the creation of a valid lease ?

72. What are the covenants which a lessor would be entitled to insist upon in a lease of a house, for the granting of which he had entered into an open contract ?

73. What classes of covenants by lessors and lessees respectively run with the land at law so as to bind the assigns of the covenantor ? Why is the law as to covenants in leases running with the land different from that relating to similar covenants in conveyances on sale of the fee simple ?

74. Land is leased to A. for forty years at the yearly rent of £100, and subject to covenants to repair, &c. A. assigns to B., and B. subsequently assigns to C., who makes default in payment of the rent, and also allows the property to fall into disrepair. Has the landlord any remedy against A., B. or C. ?

75. What changes in the law relating to forfeiture for breaches of covenants contained in leases were made during the 19th century ? Do such changes include all lessees' covenants, or are there any, and if so what exceptions ?

76. A lessee has committed a breach of the covenants in the lease as to repairs. What steps would you advise the lessor to take before commencing proceedings to forfeit the lease ?

77. An owner in fee leases land, reserving rent quarterly, and dies between two quarter days, having devised the land to B. subject to the lease. Apart from the Land Transfer Act, who can sue the tenant for the part of the quarter's rent up to the time of the lessor's death, and when can such person sue ?

78. What is the effect of the bankruptcy of a tenant on the rights of his landlord ?

79. A. holds a lease from B., and is willing either to assign it to C. or to grant him a lease for the rest of the term less one day. What is the difference as regards C.'s liability to B. if C. takes an assignment instead of a lease? Give your reasons.

80. Explain the question "satisfied term." What were the provisions of the Satisfied Terms Act, 1845?

81. Give a short account of the changes of the law relating to the granting of leases by mortgagors, mortgagees and tenants for life respectively during the nineteenth century.

82. When can a term of years be enlarged into a fee simple? By whom can it be enlarged, and how?

83. State the proper parties to re-convey mortgaged property when the mortgagee has died—(1) in 1870; (2) in 1880; (3) in 1890. Distinguish in each case between freehold, copyhold and leasehold property.

84. Explain the expression "once a mortgage always a mortgage."

85. Enumerate the powers conferred upon a mortgagee by the Conveyancing and Law of Property Act, 1881, and what restrictions are thereby imposed upon the exercise of some or any of such powers.

86. A. mortgaged real property in 1880, and has allowed the mortgagee to remain in possession for some years. Within what time is A. entitled to redeem the property?

87. What are the objects and effects of stating in a mortgage deed that the sum advanced is advanced by the mortgagees out of money belonging to them on a joint account?

88. Distinguish between tacking and consolidation of mortgages. Give particulars of any legislation since 1870 affecting these matters.

89. What periods of enjoyment are provided by the Prescription Act as conferring an indefeasible title to the following rights in the absence of consent or agreement in writing, and where there has been no interruption in the enjoyment :
(a) Rights of common ; (b) Rights of way and water ;
(c) Rights of light ?

90. What is the position of a purchaser of leaseholds under an open contract with regard (1) to the length of title which he can require, (2) the possible risks which he incurs.

91. What remarkable changes were made during the last thirty years of the 19th century in the relative rights and liabilities of vendors and purchasers of land under open contracts ?

92. A. mortgages leaseholds as beneficial owner. What covenants are implied in such a case ?

93. What covenants are implied in a conveyance of freeholds on sale where the vendor is expressed to convey (a) as beneficial owner, and (b) as mortgagee ?

94. Distinguish between the obligations entered into by a vendor and mortgagor respectively when conveying as beneficial owner.

95. What alteration did the Conveyancing Act, 1881, make with regard to the grant of easements ?

96. In the case of registered land, what covenants for title is the purchaser entitled to demand of his vendor when the title registered is (1) Absolute ; (2) Possessory ?

97. In what cases should a lease or assignment relating to property situate within an area affected by the Land Transfer Act, 1897, be registered for the purpose of acquiring a possessory title under that Act ?

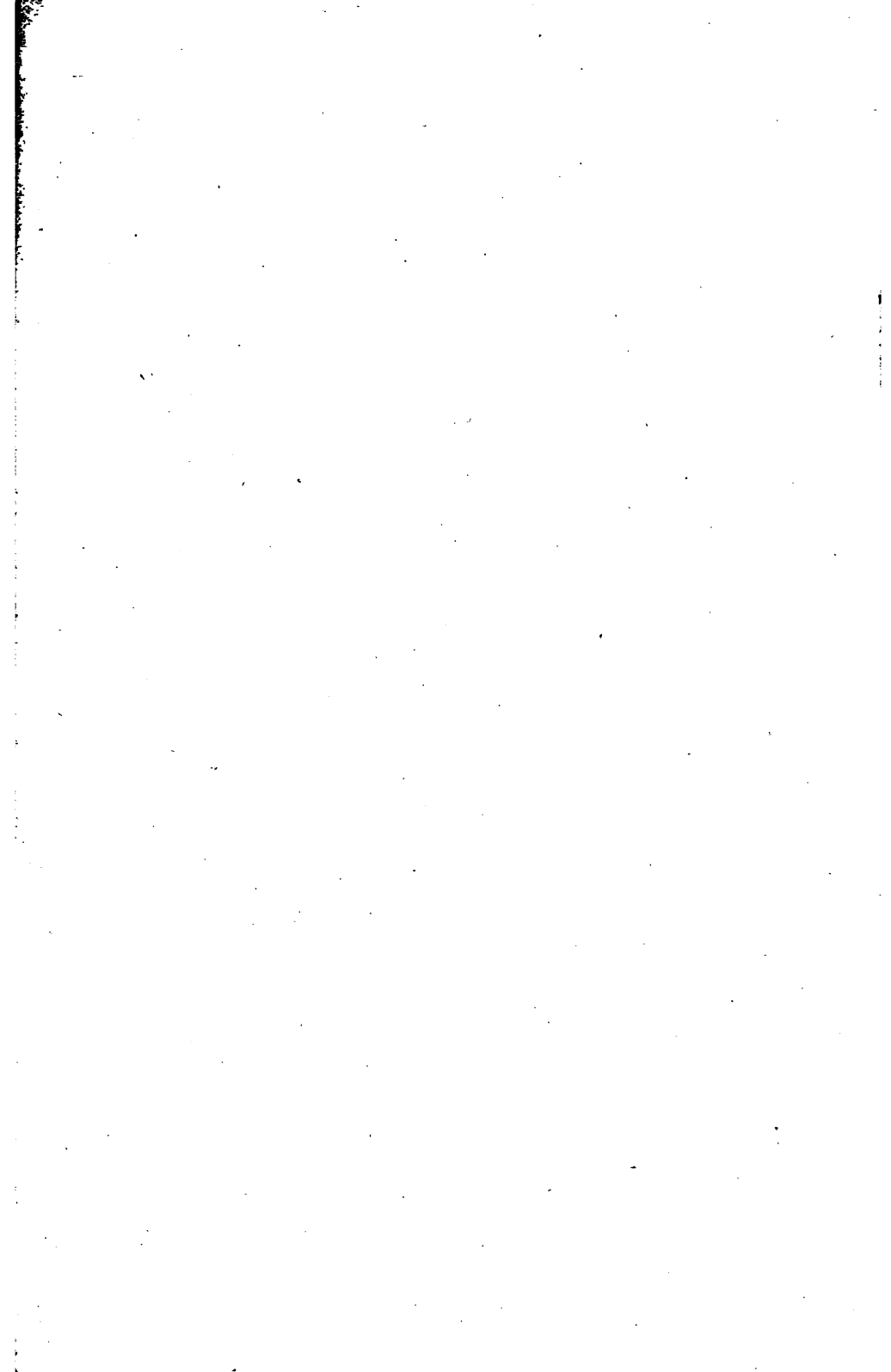
98. What is the position of a transferee of registered land without valuable consideration ?

99. Can a title to registered land be acquired by adverse possession ?

100. Explain the terms—Seised, Court Baron, Livery in Law, Deed Poll, Mortmain, Resulting Trust, Merger.

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